

After Recording, Return To:  
Alkali Timbers, LLC  
1655 Valley Heights Rd  
Billings, MT 59105

**DECLARATION of**  
**COVENANTS, CONDITIONS, RESTRICTIONS, AND DESIGN STANDARDS**  
**for**  
**THE TIMBERS SUBDIVISION**

**ARTICLE I - DECLARATION OF PURPOSE AND BINDING EFFECT**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** ("Declaration") is made this \_\_\_ day of \_\_\_\_\_, 2023, by Alkali Timbers LLC, a Montana limited liability company, hereinafter sometimes referred to as "Grantor" and sometimes as "Developer".

1. Grantor is the present owner of the following described real property located in the City of Billings, Yellowstone County, Montana, hereinafter sometimes referred to as "Property" or as "The Timbers": All lots in The Timbers, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. \_\_\_\_\_:

Being a portion of Tract A and Tract B of Certificate of Survey 3795 located in the southeast one-quarter, southwest one-quarter, northwest one-quarter, and northeast one-quarter of Section 19, Township 1 north, Range 26 east, Principal Meridian Montana, City of Billings, Yellowstone County, Montana.

2. Grantor deems it desirable for preservation of the value, desirability and attractiveness of the Property to create a development of well-implemented land use and high-quality design and construction.

3. Grantor intends by this document to impose upon the Property restrictions under a general plan of improvement for the benefit of all of the Property and the “Owners” (defined below) thereof, to protect the high-quality development and to assure adequate maintenance of the Property and improvements located thereon. The Grantor emphasizes the importance of enhancing and protecting the value and natural integrity of the Property, without limiting the general benefit to the Property of the development restrictions set forth herein.

4. Grantor hereby declares that the Property shall be held, conveyed, sold and improved, subject to the herein contained declarations, limitations, covenants, conditions, restrictions and easements, and every part thereof, all in accordance with the plan for the subdivision and sale of the Property as a planned residential community. All of these declarations, limitations, covenants, conditions, restrictions and easements shall constitute covenants and encumbrances which shall run with the Property and each estate therein, and shall be perpetually binding upon all Owners and their successors-in-interest and assigns, and all “Persons” (defined below) having or acquiring any right, title or interest in or to any part or related appurtenance of the Property or any “Lot” (defined below), parcel or portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Grantor, its successors in interest and each grantee and each grantee’s respective successors in interest, and the “Association” (defined below). All Owners by acceptance of a deed to any Lot subject to this Declaration, and all purchasers of lots under a contract of sale, agree to conform to, and be bound by these covenants, conditions and restrictions, and to accept jurisdiction of the Association, its “Board of Directors” (defined below), and the “Design Review Committee” (defined below), in all matters so defined by these covenants, conditions and restrictions. Further covenants, conditions and restrictions shall be imposed under the Angel Oaks Sub-Association (defined below) and its additional governing documents.

5. Grantor does hereby make, establish, confirm and impress upon the Property the following covenants, conditions and restrictions, limitations, easements, and equitable servitudes, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, or any lot, parcel or portion thereof, and to sustain the value, desirability and attractiveness of the Property.

## **ARTICLE II - DEFINITIONS**

Unless otherwise expressly provided, the following words and phrases, when used in this Declaration and in the “Governing Documents” (defined below), shall have the following meanings:

1. Angel Oaks. The Angel Oaks Sub-Association, a Sub-Association formed by Grantor in conjunction with this Declaration, and which imposes additional covenants,

conditions and restrictions for the specified lots on the Property (Block 1, Lots 1-27) and is governed by the applicable governing documents for the Sub-Association.

2. Articles. The Articles of Incorporation of the Association, as restated or amended from time to time.

3. Assessment. Fees payable by an Owner to the Association as determined by the Board of Directors pursuant to this Declaration. Assessments may be designated as Regular Assessments, Special Assessments and Extraordinary Assessments as those terms are more specifically defined in this Declaration.

4. Association. The Timbers Subdivision Property Owners Association, an Association formed by Grantor in conjunction with the execution and recordation of this Declaration.

5. Avoided Wetland Area. The area indicated in the attached Location Map, which is restricted from use pursuant to Article III, Section 25 below. See **EXHIBIT "A"**

6. Board or Board of Directors. The Board of Directors of the Association, as it shall be constituted from time to time in accordance with the terms of the "Bylaws" (defined below).

7. Bylaws. The Bylaws of the Association as stated or restated or amended from time to time.

8. Common Area. That part of the Property which is not a Lot, including but not limited to private roads, parks, trails, ponds, and those areas labeled on the Plat as "Open Space".

9. Common Area Improvements. Those improvements constructed by Grantor in the Common Area.

10. Declaration. This Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

11. Design Review Committee. A committee appointed to review all Plans for Improvements within the Property. The Design Review Committee shall be established and function according to procedures pursuant to Article VI below.

12. Design Standards. Guidelines and standards for Lot and Common Area Improvements as set forth in this Declaration and "The Timbers Resident Design Guidelines" (publicly available at the Yellowstone County Clerk and Recorder's Office) as both may be amended from time to time.

13. Developer. Alkali Timbers LLC and its successors-in-interest 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.

14. Governing Documents. The Articles, this Declaration, and the Bylaws, all as initially prepared by the Grantor and filed and recorded as the case may be, and all as may be duly amended from time to time.

15. Grantor. Alkali Timbers LLC, its successors-in-interest and assigns, but excluding third parties purchasing Lots.

16. Improvement. Any man-made undertaking including “Major Excavations” (defined below), erection of any “Structure” (defined below), establishment of any driveway, parking pad or other surface modification where a vehicle will be parked or driven, or other construction activities which would result in consequences for adjoining Property, Lots and Owners, or which would significantly modify the physical appearance of any Lot.

17. Lot. Any of the above designated parcels of land within The Timbers Subdivision intended for improvement with a single-family residence or a patio home as indicated by a lot number on the Plat.

18. Major Excavation. Any man-made disturbance of the natural topography of over 200 square foot in area and/or which requires cutting and/or filling activity to a depth and/or height of more than one (1) foot from undisturbed natural grade.

19. Member. A member of the Association, as defined in Article VIII of this Declaration.

20. Owner or Owners. The record holder or holders of title to a Lot or Lots within the Property, including the Grantor. This shall include any Person having a fee simple title to any Lot but shall exclude Persons or entities having any interest merely as a security for the performance of any obligation. Further, 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”.

21. Person. Any natural person, corporation, partnership, limited liability company, association, trustee, personal representative of a decedent's estate, or other legal entity.

22. Plans. Includes the site plan, building plan and landscape plan for a Lot presented for review and approval by the Design Review Committee.

23. Plat. The subdivision plat for "The Timbers Subdivision", recorded in the office of Yellowstone County Clerk and Recorder, under Document No. \_\_\_\_\_.

24. Property. The real property described in Article I, Section 1 above, which is subject to this Declaration, and every easement or right appurtenant thereto, and all improvements on that real property.

25. The Timbers. The Timbers Subdivision in the City of Billings, Yellowstone County, Montana, and lots in any subsequent filing of The Timbers Subdivision.

26. Structure. A man-made edifice including residences, guest houses, garages, shops, sheds, gazebos, platforms, decks, and constructed patios in excess of 100 square feet in area and/or four (4) feet in height.

27. Zoning Ordinance. Provisions of The City of Billings, Montana zoning codes and ordinances, as amended from time to time, which are applicable to the Property.

### **ARTICLE III - USE RESTRICTIONS**

1. Residential Use. Lots shall be used only for single family residential purposes. No Structure shall be erected on any Lot except one single-family residence with an attached garage, one private detached garage and/or shop for the use of occupants of such residence, and one additional outbuilding equaling sixty percent (60%) or less of the total residence square footage (Garage and porch are not calculated in residence square footage). The term residence as used herein excludes every form of boarding and lodging house, sanitarium, hospital, hotel, apartment house, residential duplex or multiplex, or similar structure or use.

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. No Commercial Use. No Lot shall be used at any time for business or commercial activity, or other non-residential purposes excepting, however, that a home business may be operated out of a residence where the use or activity complies with all of the following criteria: 1) the business is conducted exclusively by Persons residing on the Lot; 2) no noticeable increase in traffic over and above normal residential activity is generated by such home business; 3) no exterior signs or other indications of the home business shall be displayed; and 4) the business activity complies with all requirements of the Zoning Ordinances.

4. No Temporary Residence. No camper, trailer, or recreational vehicle,

temporary structure, garage, accessory building or outbuilding shall be used as living quarters or as a residence.

5. Roads and Streets. Except as provided herein, all roads and streets within The Timbers will be dedicated to the City for public use and will be maintained by the City, unless the Association determines that additional snow removal is necessary. Roadways within The Timbers shall be traveled upon in a safe manner, at speeds no faster than what is posted by the City of Billings, or less, as conditions warrant for ice, dust, snow, and other conditions. Vehicles shall travel within the roadbed, yielding to pedestrian traffic and oncoming traffic as safety requires.

The Timbers shall have a private road located on boundary line between Lot 17 and Lot 20 of the single-family parcels, as shown on the Plat, which runs from the end of Black Fig Court to provide access to Lots 18 and 19. The Association shall maintain this private road, including snow removal when 2” or more of snow accumulates.

6. Parking. No recreational vehicles, boats, campers, or trucks larger than those having a two-ton manufacturers rating shall be parked or stored on a road, street, alley, or driveway, except due to emergencies or while making deliveries. The foregoing shall be permitted to remain on any Lot provided they are placed within an enclosed structure. No utility, boat, travel or other trailer, motor home, recreational vehicle, commercial vehicle, bus, or truck having a manufacturers rating of more than two tons, inoperable vehicle or equipment, or vehicle which is an extreme state of disrepair, shall be permitted to remain on any Lot, road, street, alley, or driveway other than temporarily for the purposes of loading or unloading passengers and/or personal property, unless placed or maintained within an enclosed structure. Vehicles or trailers (including without limitation, recreational vehicles, boats, campers, or trucks, utility trailers, boat trailers, travel or other trailer, motor home trailer, recreational trailer, commercial vehicle, bus, etc.) cannot be parked on the street for more than 24 hours. Moving pods cannot be placed in driveway or on the street for more than 5 days. Small utility tractors, riding lawn mowers, tractors, heavy machinery, vehicles or any other machinery, including implements for such tractors and vehicles, shall be stored in an enclosed structure. All other motorized vehicles shall be parked or driven only on roadways, driveways, garages and designated parking areas. No heavy machinery, heavy equipment or similar items shall be stored, kept or maintained on a Lot except in the course of active construction.

7. Firearms/Fireworks. The discharge of any type of weapon, firearm, or fireworks within The Timbers is strictly prohibited.

8. Clothes Lines. No outdoor clothes lines shall be permitted on any Lot or on the Common Area.

9. Nuisances. No noxious or illegal activity shall be conducted in The Timbers, nor shall anything be done which may interfere with the quiet enjoyment of the

other Owners or occupants of Lots. Excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise is prohibited. No Person shall maintain, allow or establish a private or public nuisance on any Lot.

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

11. Trails/Pathways. Pedestrian traffic shall be limited to the trail system. No motorized vehicles shall be allowed on pathways or trails in The Timbers.

12. Noise. Residents, their families, and guests shall not make noise which disturbs other residents. No excessive noise of any kind is permitted. Residents, their families, and guests shall adhere to the City of Billings noise ordinances.

13. Trespass. Residents and their families and guests shall not trespass on other Lots.

14. Preservation of Habitat. No Lot Owner or other Person shall be allowed to remove or disturb any trees, brush, ground cover, rocks or other natural features on another Lot or Common Areas without prior written consent of the other Lot Owner or the Association.

15. Maintenance. Each Lot and the exterior appearance of Improvements thereon shall be maintained in a clean, neat and orderly condition at all times by the Owner.

a. General Maintenance. Each Owner shall maintain all Improvements and landscaping located on their Lot in good and sufficient repair and shall keep the Improvements thereon 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 Improvements shall be repaired as promptly as is reasonably possible.

b. Vacant Buildings. A Structure, which is vacant for any reason, shall be kept locked in order to prevent entrance by vandals. Structures utilized for residential and storage purposes shall be illuminated so as not to invite potential vandalism.

c. Unsightliness/Blight. Any event or condition on a Lot, which in the sole discretion of the Board creates an unsightly appearance or blighting influence, shall be corrected or removed, as the case may be, by the Owner, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration. The Board of Directors, after giving one warning, may fine Owners who continue to violate this restriction; such fines will be treated as a Special Assessment.

d. Restoration/Removal of Residential Improvements. In the event

of any destruction of any portion of any Improvement on a Lot, the Owner thereof shall restore and repair the same to its former condition or remove such Improvement as promptly as practical. If an Improvement is removed, the grounds of the affected area shall be restored in topography and vegetation so as to prevent any environmental damage and be aesthetically pleasing. If reconstruction affects the exterior of an Improvement, Plans shall be reviewed and approved by the Design Review Committee, unless the reconstruction is of like color and material.

e. Maintenance by Association. In the event that any Owner shall permit any Improvement on a Lot to fall into disrepair so as to create a dangerous or unsafe condition, the Board shall notify the Owner to take corrective action. If corrective action is not taken by the Owner within such reasonable time, as determined by the Board, after receiving said notification, the Board may, but shall have no obligation to, cause such corrective action to be taken and shall assess the expense of correction to the Owner as a Special Assessment.

16. Screening. All movable equipment shall be enclosed within an approved Structure or appropriately screened from public view. All garbage shall be kept in covered containers that shall be screened from public view, except on garbage pickup day. All screening must conform to the standards set forth in the Design Standards.

17. Animals/Pets. Except as otherwise provided herein, no insects, wild animals, cattle, pigs, roosters, goats, horses or livestock of any kind shall be raised, bred or maintained on any Lot. Domesticated dogs, cats, birds (including poultry, but not roosters) 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 or in violation of City of Billings' ordinances. All pets must be restricted to the Owner's 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 notification of the local animal control board and/or the levying of a fine or Special 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, but shall have no obligation to, pay for having the cleanup or repairs done and bill the cost to the Owner as a Special Assessment.

18. Drainage. No Owner, Member or Person shall change or interfere with the designed drainage of any part of the Property except in connection with Plans approved by the City of Billings Engineer, and the Design Review Committee.

19. Leasing. No Owner shall lease any Structure for a term of less than thirty (30) days and shall not lease any Structure until the Owner has occupied the Structure for twelve (12) consecutive months. Vacation rentals of any sort is strictly prohibited. An Owner is limited to leasing only one Structure on the Owner's Lot at a time. No multi-family leasing shall be allowed. Any such lease or rental agreement must be in writing and

shall contain provision obligating the tenant to conform to the covenants and restrictions contained in this Declaration, the Bylaws, all rules and regulations adopted the Association, and federal, state, and local laws, regulations, and ordinances The Owner shall be responsible and liable for any fines or other costs incurred which result from a tenant's actions in violation of the covenants and restrictions contained in this Declaration, the Bylaws, any rules and regulations adopted the Association, and any federal, state, or local law, regulation, or ordinance.

20. No Further Subdivision. No Lot shall be further subdivided, provided however that: 1) A lot may be enlarged by consolidation with an adjacent Lot which shall be evidenced by a recorded instrument, and the resulting larger parcel shall thereafter be deemed to constitute a single Lot. This restriction shall not prevent an Owner from transferring or selling any Lot to more than one Person.

21. Signs. The only approved signs allowed on any Lot will be the following: "Home for Sale" small signs designating home security (supplied by agency), signs temporarily posted for yard sales, and election signs. Election signs may only be displayed on Lots during the statutorily allowed period prior to the election, must be removed the day following the election, must be pertinent to election issues or candidates, and shall not exceed two feet by three feet in size. No more than three signs shall be permitted on any Lot at any time. No signs shall be permitted in the Common Area or in the public right of way, except those installed by or required by the City of Billings, or the State of Montana, and signs placed in these areas by the Board.

22. Noxious Weeds. Each Owner shall control and eradicate noxious weeds on that Owner's Lot.

23. Driveways and Sidewalks. All driveways and sidewalks constructed to service a Lot shall be constructed with an all-weather surface of finished concrete or asphalt base. Owners shall be responsible for maintenance, repair, and snow removal for all driveways and sidewalks servicing the Owner's Lot.

24. Park Strips. The narrow strip of land between the sidewalk and street, commonly referred to as a "Park Strip", shall be the responsibility and maintained (including maintenance of trees, grass, shrubs, etc.) by the Owner of the Lot where the Park Strip is located.

25. Avoided Wetlands. The following additional restrictions apply to the Avoided Wetland Area, which is identified in the attached Location Map:

a. There shall be no construction or placement of structures or mobile homes, fences, signs, billboards or other advertising material, or other structures, gardens, planters, whether temporary or permanent, within the Avoided Wetland Area.

b. There shall be no filling, draining, mining, drilling or removal of topsoil, loam, peat, sand, gravel, rock, minerals or other materials.

c. There shall be no building of roads for vehicular travel or any change in the topography of the wetland.

d. There shall be no removal, destruction, or cutting of native herbaceous plants, grazing of animals, farming, tilling of soil, or any other agricultural activity. Management activities are acceptable upon approval from the U.S. Army Corps of Engineers. Invasive weed and tree control shall be allowed.

e. There shall be no operation of recreational all-terrain vehicles or any other type of motorized vehicle on the land. Operation of all-terrain and maintenance vehicles shall be allowed for vegetation management.

f. This Covenant of Dedication may be changed, modified or revoked only upon written approval of the District Engineer of the Omaha District of the U.S. Army Corps of Engineers. To be effective, such approval must be witnessed, authenticated, and recorded pursuant to the law of the State of Montana.

g. This Covenant is made in perpetuity such that the present owner and its heirs and assigns forever shall be bound by the terms and conditions set forth herein.

26. Community Fencing. The Association shall install, own, and maintain a community fence along Alkali Creek Road on Lots 27 and 2-11 of Angel Oaks (Block 1). The Association shall have access across said Lots to maintain the community fence. The Association may also levy a Special Assessment against a said Lot to reimburse the Association for costs incurred to repair the community fence for damage caused by that Lot's Owner, residents, or guests.

#### **ARTICLE IV - CONSTRUCTION REQUIREMENTS**

1. Design Standards. All Improvements and landscaping to any Lot shall comply with the Design Standards as set forth in this Declaration, as they may be amended and adopted from time to time by the Design Review Committee.

2. Design Review. No Improvement shall be built, constructed, reconstructed, erected, placed or materially altered on any Lot until applicable Plans therefore have been reviewed and approved by the Design Review Committee.

3. Driveways. All driveways and walkways constructed to service an individual Lot shall be constructed with an all-weather surface.

4. Insurance. All Owners shall maintain or require contractor(s) and

subcontractors performing work on their Lot, to maintain comprehensive general liability insurance of not less than \$1,000,000.00 covering construction activity and personnel involved during any construction of any Improvement from start to finish. All such insurance shall name the Association and the Grantor as additional insured parties.

5. Scheduling. The Owner or the Persons performing the construction activity shall provide the Design Review Committee with the tentative construction schedule no later than thirty (30) days prior to initiating construction.

6. Duration. Construction of Improvements on a Lot shall be commenced within one (1) year from the date of Design Review Committee approval. Construction shall be diligently performed from its commencement to completion of the exterior of the Structure(s) and any necessary improvements to the grounds surrounding and affected by construction of the Structure(s). In any event, the exterior appearance of the Structure(s) shall be completed within one (1) year after the commencement of construction unless the Design Review Committee approves an extension. The Owner of the Lot or Lots shall, within a period of nine (9) months 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 or Lots.

7. Building Permits. Valid building permits as required for any new construction or alteration pursuant to the requirements of the City of Billings or other governmental bodies shall be maintained on site.

8. Approved Plans. A copy of the Plans and conditions, if any, as approved by the Design Review Committee and bearing the signature of the Design Review Committee, shall be maintained on site during construction.

9. Compliance with Governing Documents. The Owner shall be responsible for verifying that any and all contractors, subcontractors, material suppliers and others working on an Improvement to the Owner's Lot comply with all Governing Documents. Failure to comply with the Governing Documents may result in one or more fines being levied against the Owner, and/or a directive from the Board to discontinue construction (stop work order). Fines will be charged to the Owner as a Special Assessment.

10. Grading and Excavation. All site grading shall be done in strict conformance with the storm water master plan approved by the City of Billings Public Works Department and by the appropriate regulating authority, if applicable. Care shall be taken to avoid unnecessary disturbance of any foliage or groundcover. All areas laid bare through excavation or grading which are not resurfaced by an Improvement shall be reseeded with grass or other landscaping as soon as practicable and conform to the requirements of the Storm Water Management Plan, if applicable. Scheduling and timing of all excavation activity shall take into account expected seasonal and daily weather conditions. 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.

11. Erosion Control. Bare slopes and wetlands are to be strictly avoided due to potential for erosion and associated environmental impacts unless governmental agencies provide prior written authorization development, as may be applicable. During construction, straw bales and or appropriate filter fabrics shall be placed in drainage ways and mulch or erosion control blankets placed on disturbed areas, as necessary, to prevent any materials from contaminating adjacent Lots, streets, or Common Area. A surface water intake protection plan must be submitted to the design committee before construction.

12. Storm Water Management Plan. All construction plans shall comply with the City of Billings Storm Water Management Plan, if applicable.

13. Material Storage and Removal. No building material 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 or stored within an approved Structure.

14. 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, or in the street adjacent thereto. No construction parking shall be allowed on a neighboring Lot without the prior written permission of such Lot Owner.

15. Construction Hours/Noise. In an effort to maintain the tranquility of the Property and to minimize inconvenience to neighboring Lots, no exterior construction activity shall commence before 7:00 A.M. or continue after 8:00 P.M., and no excessively loud playing of a sound amplification device shall be allowed. No exterior construction that produces noise shall be allowed on Sundays.

16. Cleanup of Construction Debris. An Owner shall require that all construction workers take reasonable measures to contain construction debris, including coffee cups and food wrappers, on that Owner's Lot. The Owner must arrange for cleanup of debris on the site and on surrounding areas at least once a week during construction.

17. No Modular or Log Homes. No manufactured home, modular home, mobile home, or log home shall be permitted in The Timbers.

## **ARTICLE V - UTILITIES**

1. Utility Services. Each Owner shall make all payments directly for all water, sewer, electrical, telephone, cable television, internet, and other utility services

furnished to or used by such Owner.

2. 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 that Owner's Lot from the adjacent service pedestal or junction box.

3. Sewer. Each Lot is required to attach to the City of Billings public sewer system, during construction of any Structure or Improvement, at the sole cost and expense of that Lot Owner.

4. Water/Wells. Each Lot Owner is required to attach to the City of Billings Public water system at the sole cost and expense of that Lot Owner. A residential water well shall be permitted for irrigation purposes, if approved by all appropriate governmental authorities.

#### **ARTICLE VI - DESIGN REVIEW AND DESIGN REVIEW COMMITTEE**

1. Design Review. For the purposes of assuring the development of the Property as an area of high standards, the Grantor reserves to the Design Review Committee the right to assure that any Structure, Improvement, or landscaping that is constructed or installed on an individual Lot meet standards and guidelines as set forth in this Declaration, including the Design Standards described below. Grantor reserves to the Design Review Committee the right to make exceptions to the Design Standards as it shall deem necessary and proper. Grantor shall have the authority to augment, amend, or otherwise modify such Design Standards from time to time, without consent of any other Owner; provided that they shall at all times, be consistent with the building restrictions imposed by law. The Design Review Committee, without consent of any other Owner may modify the Design Standards or adopt additional ones as it sees fit and may authorize exceptions to the Design Standards as it sees fit. The Design Review Committee must approve, in writing, any new or modified Design 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.

2. Design Review Committee. So long as Grantor owns any of the Lots in The Timbers, Grantor shall have the sole right to appoint a Design Review Committee consisting of two (2) or three (3) natural persons to consider and review any and all Plans submitted for approval based on Design Standards set forth in this Declaration. Grantor, in its sole discretion, may elect to turn over its power to appoint natural persons to the Design Review Committee, to the Association, at any time prior to sale of all Lots which are subject to the Declaration.

3. Required Plan Review. No Improvement shall be erected, constructed,

placed, continue to be constructed, or maintained upon any Lot, nor shall any major remodeling, reconstruction or alteration of a Structure's exterior be made or continue to be made, nor shall any Major Excavation occur on the Property, unless and until the same has been approved in writing by the Design Review Committee. Repair or replacement of a Structure's exterior (for example, due to hail or windstorms) may be completed without Design Review Committee approval, provided that the repair or replacement is of like color and material.

4. Review Fees. The Design Review Committee shall have the right to require an Owner submitting an application for approval of Plans, or for preliminary review, to pay a review fee to compensate the Design Review Committee for reasonable expenses incurred in reviewing and processing the application, if any. Expenses may be estimated by the Design Review Committee, which shall be billed to the Lot Owner as a special assessment by the Board. The Design Review Committee shall not be obligated to initiate review of an application or continue a review of an application until such estimated or actual fees are paid. If the Design Review Committee determines that it will be necessary or advisable to employ an architect or engineer to assist with review, it may do so. Fees paid to the architect or engineer shall be billed to the Owner of the Lot under review as a special assessment by the Board, upon notification of the amount of those fees by the Design Review Committee, or in its discretion the Design Review Committee may require the Owner to pay those fees to the Design Review Committee before conclusion of the review process. At the end of the review process, the Design Review Committee shall true up all review fees with the Lot Owner, and refund any excess, or collect any deficiency.

The Design Review Committee may estimate the amount of the preliminary review fee to be paid, and mail all Owners a schedule of the amounts of the estimated fees. The estimated fees shall equal the estimated average amount of the costs which will be incurred by the Design Review Committee during the review process. The Design Review Committee may modify the estimated fee schedule from time to time, as review costs increase or decrease.

5. Preliminary Plan Review. Preliminary plan review shall be an optional informal advisory process intended to be an open dialogue process between an Owner and/or a prospective buyer of a Lot and a designated representative (s) of the Design Review Committee. At an Owner's request a preliminary plan review may be held to review proposed building and landscaping concepts and to discuss site considerations with a designated representative(s) of the Design Review Committee. Request for a preliminary review shall be arranged by contacting a member of the Design Review Committee by phone or by mail. The Design Review Committee representative(s) shall use good faith efforts to initiate the preliminary plan review process within ten (10) working days of receipt of any request for such review. The Owner requesting such review shall be liable for a non-refundable preliminary review fee, payable at the time the general plan is submitted. The Person, or Persons, proposing the construction of an Improvement, should provide the designated Design Review Committee representative(s) with a general plan containing the

following information for preliminary review: a) layout of driveways and parking areas, b) location, design and size of Structures, c) Major Excavations and effect on existing topographical features, and d) drainage patterns and storm water system.

These general plans can consist of sketches, drawings and photos, and be communicated verbally to the Design Review Committee representative(s). It is the responsibility of the Owner or purchaser of a Lot to provide enough information to allow the Design Review Committee representative(s) to make an informed review and finding. The following information shall be discussed at the preliminary review: setbacks, natural screening, architectural concept, exterior finishes and materials, building heights, view corridors, site drainage and storm water management, access drives, on-site parking, proposed outbuildings, utilities, preservation of existing trees, compatibility with surroundings and the requirements necessary for an application to the full Design Review Committee. The designated Design Review Committee representative(s) providing the preliminary review shall document his or their findings in writing.

6. Review Application. Before beginning the construction of any Improvement, any alteration of a Structure's exterior, or any significant landscaping changes, the Person desiring to erect, or construct, or modify the same shall submit to the Design Review Committee two sets of Plans for the proposed Improvement, alteration, or installation. These Plans shall be signed by the Owner, be consistent with the Design Standards, and contain all information requested and be accompanied by all other material to be submitted.

All applications for review shall contain the following material as deemed appropriate for the proposed Improvement, alteration, or installation, collectively called Plans, prepared in accordance with acceptable standards, including the Design Standards and submitted with an application form, if any, as approved by the Design Review Committee:

a. Site Plan: A site plan showing: 1) the location of all Improvements including Structures, fences, walls, driveways, parking areas, utilities, outbuildings, decks; and 2) existing topography and contour in relation to the proposed Improvements and cut and fill excavation requirements; and 3) other pertinent information relating to the Improvements. General or typical cross-sections and profile plans shall be submitted where Major Excavation is proposed.

b. Building Plan: A building plan which shall consist of: 1) the Structure(s) dimensions; and 2) elevation drawings or sketches of the exterior of the Structure(s); and 3) information concerning the exterior of the structure(s) which shall indicate all exterior colors, materials and finishes, including roof, proposed to be used.

c. Landscape Plan: A general landscape plan and/or drawings of proposed landscape features, consistent with the Design Standards, including planting

areas, location of existing trees and proposed removal of trees, if any, proposed plant types, and drainage plans, if required by the City of Billings. The landscape plan may be incorporated into the site plan. The general landscape plan must identify existing trees that are proposed to be removed and the Design Review Committee shall have the authority to require the planting of trees to replace those that have been removed. The landscaping plan for each Lot must include the following features and requirements:

- All homeowners must plant an Autumn Blaze Maple Tree every 40 feet on their “park strip” frontage. Trees should be evenly distributed on the “park strip” and create a uniform look with adjacent neighbors.
- Each lot must have at least one Autumn Blaze Maple Tree on their “park strip” frontage.
- Planted trees must be a 2” caliper minimum.
- Trees must be planted in the nearest planting season at the time of occupancy.

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 Design Review Committee in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the Design Review Committee, in reviewing and processing the application.

7. Basis of Approval. In reviewing the application and the materials submitted and in reaching a decision thereon, the Design Review Committee 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 Property as a first-class residential development.

Approval by the Design Review Committee shall be based, among other things, on; a) the Design Standards, b) the adequacy of the Lot dimensions in relation to the Plans, c) conformity and harmony of external design with neighboring Improvements, d) the effects of location and use of proposed Improvements on neighboring Lots, e) relation of Improvements and finished ground elevations to existing topography and grades, f) natural landscaping of the Lot in relation to that of neighboring Lots, g) proper facing of the main elevation with respect to adjacent Lots; h) the overall aesthetics of subdivision; and i) the conformity of Plans to the purpose and general plan and intent of this Declaration.

Because the review does include judgments about aesthetics by the Design Review Committee and because the aesthetic consideration cannot be clearly defined in this Declaration, the decisions of the Design Review Committee will be subjective in nature, Each Owner, by acceptance of a deed to any lot subject to this Declaration, including expansion Lots, agrees to accept the aesthetic decisions of the Design Review Committee as final and binding, and waives any right to challenge those decisions through legal action.

8. Decision. Unless extended by mutual consent of the Owner and the Design Review Committee, the Design Review Committee shall render its decision with respect to the application within thirty (30) days after the receipt of a complete application. If additional information is requested from the Owner to complete the review, a reasonable amount of additional time shall be allowed for the Design Review Committee to consider this information prior to rendering a decision. The decision of the Design Review Committee can be in the form of an approval, a conditional approval, or denial and shall be in writing, dated and signed by the representative(s) of the Design Review Committee. A copy thereof shall be mailed to the applicant at the address shown on the application.

Approval of Plans shall be evidenced by a written endorsement on such Plans, a copy of which shall be delivered to the Owners of the Lot upon which the proposed Improvements are to be located. A copy of such approved Plans shall be kept on the respective Lot during the entire course of the work to which said Plans relate. No significant changes or deviations in and from such Plans, as approved, shall be made without the prior written consent of the Design Review Committee.

A denial of an application shall state the reasons for such denial. Conditional approval of proposed Plans as submitted and reviewed may be granted by the Design Review Committee outlining specific changes, alterations and amendment to such Plans that shall be required in construction of the proposed Improvement. Owner shall acknowledge acceptance of any conditional approval in writing prior to the start of construction.

Review and approval by the Design Review Committee does not relieve the Owner from obtaining approval of site plans and a building permit from the City of Billings.

9. Variances. The Design Review Committee may waive or grant variances to any conditions and restrictions contained in this Declaration, or to any prior approval, when, in the sole discretion of the Design Review Committee, circumstances such as topography, natural obstructions, aesthetics or environmental considerations, or hardship may so require, or when the proposed Improvement, Structure, or landscaping is not in strict conformance with the Design Standards, but meets the aesthetic intent of the Design Standards.

10. Changes to Approved Plans. An Owner must obtain prior written approval of the Design Review Committee to any changes to approved plans if those changes affect the exterior of the building or the landscaping or other exterior Improvements. A copy of approved revisions must be attached to the approved Plans and be available at all times on the respective Lot during the course of construction by that Owner.

11. Inspections. The Owner shall be responsible for constructing Improvements in accord with approved Plans whether or not the Design Review

Committee performs any inspections. The Design Review Committee may inspect all work in progress on any Lot at any time but is not obligated to do so. Such inspection shall be for the purpose of determining whether the Owner is proceeding in compliance with the approved application and the approved Plans.

Should the Design Review Committee determine that there has been a deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner, and to the Board, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives; a) the Owner shall immediately cease the activity which constitutes a deviation or violation, and/or b) the Owner shall adhere to the corrective measures set forth in the written notice.

12. Non-Liability. Neither the Design Review Committee or the Grantor, or their respective members, partners, officers, employees, agents, successor or assign, 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 Design Review Committee, including its members or representatives, 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 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 Lot or the Property, or c) the internal operation or functional integrity of any Improvement, or d) any Zoning Ordinance or building code violations, or any other governmental rule or regulation applicable to the Lot or the Property.

Every Person who submits an application to the Design Review Committee for approval of Plans agrees, by submission of such an application, and every Owner agrees, by acquiring title to a Lot or an interest therein, not to bring any action or suit against the Association, the Board, members or representatives of the Design Review Committee, or the Grantor or its officers, partners, members, employees, agents, successors or assigns to recover damages as a consequence of the design review process set forth herein.

13. Enforcement. The decisions of the Design Review Committee and the requirement to obtain approval of the Design Review Committee 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 three (3) months after the Design Review Committee issues a written a notice of the violation or within six (6) months after it becomes apparent that an Owner has not obtained the required approval or has deviated from the approval plans, whichever occurs later. In any such action, the prevailing party shall be entitled to recover all costs and attorney fees incurred from the losing party.

## ARTICLE VII - DESIGN STANDARDS

1. New Build. Any building or residence erected on a Lot shall be of new construction; no pre-engineered, pre-fabricated, old, or used buildings or residence shall be moved onto any Lot. All permanent buildings and residences 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.

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

3. Landscaping. Landscaping for the ground affected by construction of, and in the immediate area of an Improvement shall be completed within nine (9) months after completion of construction.

4. Setbacks.

- a. No in-ground swimming pool or like facility shall be constructed on any Lot within 10 feet of any Lot line and only as permitted under applicable Zoning Ordinances.
- b. No Structure shall be located on any Lot so that any part of the Structure, other than awnings or minor decorative fixtures, is nearer than twenty-five (25) feet from the front line of the Lot on which the Structure is located (front setback), unless otherwise required by the applicable Zoning Ordinances.
- c. No Structure shall be located less than ten (10) feet from either side Lot line of the Lot on which the Structure is located, measured from the Lot line to the nearest wall of the Structure (the side setback), unless otherwise required by the applicable Zoning Ordinances.
- d. Setbacks from any street for a building situated on a pie shaped Lot shall comply with the Zoning Ordinances, and with the front and side setbacks set forth in this section.
- e. Owners must comply with these setback requirements, and with the setback requirements imposed by the Zoning Ordinances in effect at the time of construction.

5. Design of Structures.

a. Traditional Design. As the design of all structures shall be traditional in attitude, the use of traditional forms and design elements (e.g. pitched roofs, columns, arches, trellises, dormers, etc.) is encouraged. There is no requirement for a literal interpretation of a traditional style, but the design of all structures should address the environment and homes customary to the community within The Timbers.

b. Exterior Walls. Exterior walls of all Structures shall be sheathed with brick, stone, clapboard, stucco, or a similar exterior siding, although the Design Review Committee 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.

c. Roof. All roofs of all Structures shall be pitched at an angle not less than 4/12, and shall be clad in composite shingles or slate or a slate-composite material, provided that another roof employing other materials will be permitted if architecturally harmonious.

d. Garage. A side entry garage is highly recommended and preferred on all Lots.

- 1) All lots on Timbers Blvd must face the Blvd.
- 2) Lot 24. House must face Black Fig Court.
- 3) Lot 32. House must face Olive Lane.

e. Accessory Buildings. The construction materials for all accessory Structures shall be compatible with the primary residential Structure and the other requirements of this Declaration. Each Lot may have a garage and/or shop that combined shall not be larger than 60% of the home square footage including garage. Accessory building must be equal to or less than the height of the primary residential structure. Accessory buildings must also be in compliance with applicable Zoning Ordinances.

f. Minimum Habitable Square Feet. The habitable square feet at the ground level of any home (excluding the garage, porch, patio, deck) must be at least:

- 1) All single-family lots are required to have a minimum of 2,200 square feet on the main level.
- 2) All lots over 24,000 square feet must have a minimum total square

footage of 3,500.

g. Height. The height of any Structure is defined by and must comply with the Zoning Ordinances. Chimneys and other minor projections may exceed the maximum structure height by only four (4) feet. Structures should not have one continuous roof line that matches the building height requirements. The intent is for building roof forms and skylines to be fragmented to avoid the appearance of a monumental structure.

h. Fences. No fence, hedge, landscaping, or similar enclosure (collectively herein referred to as “fence”) shall be constructed on any Lot until after the height, type, design, and location thereof shall have been approved in writing by the Design Review Committee. Any fences shall be of a character 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:

- 1) No fence shall unreasonably restrict or block the view of nearby Lots. For this purpose, fences shall be maintained at a height not greater than six (6) feet (except surrounding pool enclosures).
- 2) No chain link, wire, vinyl, or wood fences will be approved.
- 3) No solid 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.
- 4) Front yards may not be fenced between the front of the house and the street.
- 5) No swimming facilities will be approved without a closed 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 minimum height.
- 6) Privacy fences around hot tubs and utility areas may be approved providing they are reasonable in size and appearance.

If a submission is made to the Design Review Committee for any structure upon a residential property that is deemed hazardous, the Design Review Committee reserves the right to require fencing of a designated height and type as a condition of approval.

None of these fencing restrictions shall apply to land owned by Developer and Developer shall not be obligated to obtain review by the Design Review Committee for fences on Developer’s land.

i. Removal of Soil. Except as required for permitted construction, there shall be no removal of topsoil, sand, gravel, minerals or other materials, or dredging or filling or change in topography, except as approved by the Design Review Committee.

j. Color. The color palette shall be of earth tone colors including white and dark colors which are harmonious with the landscape materials used on the Lot. Where buildings will be seen all year from off-site, colors generally are to be selected to blend the buildings into the summer and fall landscape colors (with the understanding that bright colors are prohibited, such as the bright yellow of Aspen leaves) In general this will require colors that are darker than the landscaped colors, together with textures that create multiple shadows. No Structure shall be painted or stained until the color thereof has been approved by the Design Review Committee. The Design Review Committee shall have the right to refuse to approve any color which, in its sole discretion, is inconsistent with the color scheme, or may detract from the value, of the other residential Structures on other Lots located in The Timbers or which color is not suitable or desirable for aesthetic or other reasons.

k. Exterior Structure. In order to achieve an authentic expression of the structural system on the exterior traditional materials of wood, brick, and stone are permitted as follows:

- 1) Predominate visual expression of exterior walls is to be wood, brick and/or stone. Exterior walls may have a subordinate finish of high-quality stucco or high quality EIFS or metal if they are given the shapes, colors, textures and detailing of wood or stone.
- 2) The use of river rock on exterior walls, foundations, chimneys and walls is prohibited.
- 3) 20% of the front façade must be stone or brick

l. Energy Saving Standards.

- 1) Owners are encouraged to make use of energy-saving technologies so long as those technologies comply with these design standards and the other provisions of this Declaration, and so long as the appearance of these energy-saving technologies is in keeping with the aesthetic standards within The Timbers. The Design Review Committee reserves the right to approve or disapprove energy-saving features for aesthetic or overall building design reasons.
- 2) All heated structures erected on any Lot shall be constructed with insulation with an R-value of at least R-19 in the exterior walls, at

least R-38 in the roof or cap, at least R-10 around the foundation or slab, and with at least double-glazed windows.

- 3) The use of roof mounted solar panels is permitted, subject to the review and approval of the Design Review Committee. 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.

m. Pools and Hot Tubs. Above ground swimming pools are not permitted. In-ground swimming pools, or like facility, and hot tubs are permitted and must be screened from adjacent Lots and streets. All pumps, filters and equipment for permitted swimming facilities must be located so as not to cause a nuisance to neighbors.

#### **ARTICLE VIII - OWNERS ASSOCIATION**

1. Organization of Association. The Association is organized under the name of The Timbers Subdivision Property Owners Association and is or shall be a non-profit corporation organized and existing under the laws of the State of Montana. In the event of inconsistencies between the Articles of Incorporation and Bylaws of the Association and this Declaration, this Declaration shall prevail.

2. Duties and Powers. The duties and powers of the Association are those set forth in this Declaration, the Articles of Incorporation of the Association and its Bylaws, and the laws of the State of Montana.

3. Membership. The Owner of a Lot shall automatically be a member of the Association (a "Member") and shall remain a Member thereof until such time as such ownership of a Lot ceases for any reason, at which time such membership in the Association shall automatically cease. No membership shall be accorded to a Person not an owner of record of a Lot.

4. Bylaws. The affairs of the Association shall be governed by its Bylaws.

5. Board. The Members shall appoint or elect a Board, as provided in the Bylaws. Grantor's representatives shall initially constitute the Board.

#### **ARTICLE IX - ASSESSMENTS; FEES**

1. Purpose. The Assessments levied by the Association shall be used exclusively for the purposes set forth in this Declaration, and for the necessary expenses of

operating the Association. Assessments shall be collected and enforced as provided in this Declaration.

2. Common Expenses. All of the following expenses shall be considered “Common Expenses” and charged to the Owners as set forth herein:

a. Administrative expenses of the Association, including management, accounting, and legal fees incurred by the Association;

b. Costs incurred by the Association in enforcing the Governing Documents and rules and regulations of the Association to the extent such costs are not paid by the violating Member;

c. The cost of maintenance, repair, or replacement obligations for which the Association is responsible;

d. The cost of all utility bills for Common Areas and Common Area Improvements;

e. The costs of insurance premiums and deductibles for which the Association is responsible;

f. Income taxes payable by the Association, if any, and corporation fees payable to the Montana Secretary of State; and

g. All expenses incurred by the Association in the performance of its obligation under the Governing Documents.

3. Creation of Lien, Personal Obligation and Non-Waiver. Each Owner of any Lot, except Grantor, by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay periodic Regular Assessments, Extraordinary Assessments, and Special Assessments, which shall be established and collected as provided herein, to the Association. All Assessments, together with interest, costs, penalties and actual attorneys' fees, if applicable, shall be a charge and a continuing lien upon the Lot against which each Assessment is made. The Lien will become effective upon recordation of a Notice of Assessment Lien by the Board. Each Assessment, together with interest, costs, penalties and actual attorneys' fees, if applicable, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. No Owner may exempt himself or herself from liability for payment of assessments for any reason, or by the abandonment of that Owner's Lot.

4. Regular Assessments. Regular Assessments (“Regular Assessments”) may be levied for Common Expenses. The Board shall determine the Common Expenses for the coming calendar year and fix the amount of the Regular Assessment against each

Lot other than Lots owned by Grantor, at least thirty (30) days in advance of the start of each calendar year; provided, however, and except as otherwise provided herein, the Regular Assessment may not be increased by more than twenty percent (20%) per Member above the Regular Assessment for that Member for the immediately preceding year, without the vote or written consent of a majority of the Members.

The Board shall determine the amount of the initial Regular Assessment reflecting the projected Common Expenses of the Association for the time remaining in the calendar year this Declaration is filed. The Board shall provide notification to all Owners setting forth the amount of the Regular Assessment for the following thirty (30) days prior to the end of the prior year. If the Board fails to notify Owners of the amount of the Regular Assessment for the coming year, the Regular Assessment for that year shall equal the Regular Assessment for the prior year until changed by the Board.

5. Extraordinary Assessments. In addition to the Regular Assessments authorized above, the Board may levy, in any year, an Assessment (“Extraordinary Assessment”) against each Lot, other than Lots owned by Grantor, applicable to that year only, to defray any unanticipated or underestimated Regular Assessment; provided however, that the aggregate Extraordinary Assessments for any year shall not exceed twenty percent (20%) of the budgeted gross expenses of the Association (excluding reserves) for that year, without approval by a majority vote of the Members.

6. Special Assessments. In addition to the Regular and Extraordinary Assessments authorized above, the Board may levy an Assessment (“Special Assessments”), without limitation as to the amount or frequency, against a Lot, other than Lots owned by Grantor, to reimburse the Association for costs incurred in bringing that Owner and that Owner’s Lot into compliance with the Governing Documents, including interest, penalties, actual attorneys' fees and costs, if applicable, and for the cost of any construction, re-construction, repair, or replacement of a capital improvement upon the Common Areas.

7. Construction of Clubhouse. Developer may develop (in Developer’s sole and absolute discretion) plans to build a clubhouse, to be known as The Club at the Timbers, with a swimming pool and other recreational facilities on land to be included in a future filing of the Timbers. THIS PROVISION IS NOT A GUARANTY THAT THE CLUBHOUSE WILL BE BUILT AND DOES NOT OBLIGATE THE DEVELOPER TO CONSTRUCT THE CLUBHOUSE. The clubhouse construction, operation, and maintenance shall be funded with Regular Assessments or Special Assessments as the Board shall determine. The clubhouse will serve Owners of Lots with habitable Improvements, and others who purchase a membership.

8. Due Date of Assessments. Assessment dues may be paid monthly, semi-annual, or annually, as determined by the Board. The commencement of dues will start at purchase date, and continue for the duration of the Timbers HOA existence. Extraordinary

Assessments shall be due and payable when specified by the Board, or sixty (60) days after the Board gives notice of the amount of the Extraordinary Assessment to Owners, whichever is later. Special Assessments shall be due and payable when specified by the Board, or ten (10) days after the Board gives notice of the amount of the Special Assessment to an Owner or Owners. The Board may authorize a reasonable schedule of installment payments for Extraordinary or Special Assessments but is not obligated to do so.

9. Allocation of Assessments. Excluding Lots owned by Grantor, Regular and Extraordinary Assessments shall be allocated among the Dwelling in accordance with their respective “Allocated Values” (defined below). The following values (“Allocated Values”) set forth in the table below are assigned and allocated among the parcels in the community:

<u>Parcel</u>	<u>Allocated Value</u>
Single-Family Lot	1.0
Patio-home Lot in Angel Oaks	0.5

Lots in the Angel Oaks Sub-Association will also bear an equal part of their Sub-Association dues at an allocated value of 1.0 per dwelling. Any Lot which has been enlarged by consolidation pursuant to Section 20 of Article III resulting in a larger parcel shall thereafter be deemed to constitute a single Lot.

Special Assessments shall be allocated to those dwellings which the associated costs benefitted or were expended on behalf of, as determined by the Board. Lots owned by Grantor shall not be subject to Regular Assessments, Extraordinary Assessments, or Special Assessments. Each Owner shall pay to the Association, in monthly, semi-annual or annual payments, in advance as set forth herein, the Owner's share of Regular and Extraordinary Assessments based upon the amount set forth in the approved budget.

10. Interest and Late Charges. If any part of any Assessment of any type is not paid within thirty (30) days of the due date, an automatic late charge equal to ten percent (10%) of the Assessment, but not less than ten dollars (\$10), shall be added to and collected with the Assessment. This late charge is a penalty and shall not be deemed to be payment of interest. Additionally, if any part of the Assessment is not paid and received by the Association or its designated agent within thirty (30) days after the due date, the total unpaid Assessment, including the late charge, shall thereafter bear interest at the rate of ten percent (10%) per annum until paid.

11. Transfer of Lot by Sale or Foreclosure. The sale or transfer of any Lot shall not affect any Assessment or lien, or relieve the Lot from any liability therefore, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Lot pursuant to foreclosure or by deed in lieu of foreclosure of a first mortgage or trust indenture, given in good faith for

value and recorded prior to filing or recordation of a notice of Assessment lien shall extinguish the Lien of all such Assessments as to payments that become due prior to sale or transfer. Sale or transfer pursuant to mortgage foreclosure shall not, however, affect the personal liability of the Owner for unpaid Assessments.

12. Voluntary Transfer of Lot. In a voluntary conveyance of a Lot, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments due prior to the time of the grant or conveyance, without prejudice to the grantee's right to recover such amounts from the grantor. Prior to purchase of any Lot, any purchaser, upon written request, shall be entitled to a written statement from the Board, setting forth any amount of the unpaid Assessments due the Association on the date of the statement

13. Enforcement of Assessment Obligation. The obligation to pay Assessments shall be enforced by the Board on behalf of the Association, individual Owners who are not Members of the Board may not enforce the assessment obligation of other Owners but may bring an action to compel the Board to do so.

14. Covenant to Pay Maintenance Assessments. Each Owner of a Lot subject to this Declaration, except Grantor, by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to pay to the Association all Assessments made by the Association and to waive any right said Owner may have, under the laws of the United States or the State of Montana, to claim a homestead exemption for said Assessments. If a Lot is owned by two or more people, all Persons constituting the Owner are the Member who shall be jointly and severally liable for all unpaid Assessments.

15. Remedies for Non-payment of Assessments. All unpaid sums assessed by the Association against any Lot, together with interest, collection costs, costs of suit, and reasonable attorney fees, if any, shall constitute a lien on such Lot, and if filed of record, may be foreclosed in the same manner as a construction lien. Such lien shall not take priority over any sums unpaid on a mortgage or trust indenture of record prior to the recording of the Assessment lien. Each Assessment, together with interest, collection, costs and costs of suit, and reasonable attorney fees, if any, shall also be the personal obligation of the Owner of the Lot against which the Assessment was made at the time the Assessment fell due, and suit to recover a money judgment for unpaid Assessments shall be maintainable by the Association against said Owner without foreclosing or waiving the lien securing the same. All costs of collection of delinquent Assessments, including but not limited to, court costs, costs of filing liens, and attorney fees, shall be the obligation of the non-paying Owner, and may be added to the next Regular Assessment for that Lot. No sale or transfer of a Lot shall relieve the acquirer from liability for past due assessments or from the lien thereof.

16. Association Fee and Assessments Due on at Close. The Association shall collect from the initial purchaser of each Lot, at the time of closing, a capital assessment fee of \$500 with purchaser's share of the Assessments pro-rated for the current assessment

period.

## **ARTICLE X - ENFORCEMENT OF THIS DECLARATION**

1. **Enforcement.** The Association, acting through the Board, shall have the right to enforce, by any proceedings at law or in equity, all conditions, covenants and restrictions, reservations, liens, and charges now or hereafter imposed by this Declaration. In addition, the Board shall also have additional enforcement rights with respect to any non-compliance by any Owner of any requirement of the Design Review Committee. In addition, except as otherwise provided herein, an Owner or Owners shall have the right to proceed at law or in equity to compel compliance with the terms of this Declaration, to prevent the violation or breach of any of its restrictions, and/or to collect actual damages for breach of any provisions of this Declaration.

2. **Complaints.** An Owner or Owners or the Design Review Committee may express concerns and/or complaints in writing to the Board involving violations of this Declaration. The Owner or Owners or Design Review Committee shall address the issue with all affected parties prior to initiating a request for Board action concerning the violation. When a violation is brought to the attention of the Board, the Board shall review the concern and/or complaint and take appropriate action as deemed necessary in the sole discretion of the Board.

3. **Special Assessments.** Prior to imposing a Special Assessment against any Lot Owner, alleged violations will be investigated by the Board. The Board shall attempt to resolve the matter with the Owner or other Person responsible for the violation. If an appropriate and immediate resolution is not forthcoming, the Board shall provide written notification of the violation to the Owner. If the matter is not resolved within thirty (30) days from delivery of the written notice, the Board shall have the authority to levy one or more appropriate Special Assessments according to the findings of the Board. Violations which damage or pose a significant threat of damage to the environment (water quality, vegetation, habitat, etc.) shall be subject to more severe monetary penalties. In the discretion of the Board, Special Assessments may be levied monthly (or at otherwise appropriate intervals) until such violation is corrected and/or acceptable mitigation measures are put in effect.

4. **Request for Reconsideration.** An Owner may request the Board to reconsider a decision that is adverse to the Owner concerning a general violation. The Owner shall address the issue with all affected parties prior to initiating a request for Board reconsideration. The Board shall reconsider its original decision and take appropriate action as deemed necessary. Such decision and recommended action shall be final and shall not be subject to reconsideration or further appeal.

5. **Costs of Reconsideration.** If the Board incurs any costs in reconsidering an original decision, including the costs of retaining a consultant or attorney to advise the

Board, such costs shall be paid by the party(s) making the request for reconsideration, unless the Board's decision constitutes a substantial reversal of the original decision, in which event such costs shall be paid by the Association. If the Owner requesting the reconsideration is obligated to pay such costs, payment of same shall be enforceable as a Special Assessment

6. Restoration of Lot. In the event an Owner fails to plant or to maintain that Owner's Lot or the Improvements thereon, as provided herein, in a manner which the Board deems necessary to preserve the appearance and value of the Property, and/or to prevent a fire hazard or other dangerous condition, the Board may notify the Owner of the work required and demand it be done as soon as necessary, as determined by the Board. In the event the Owner fails to carry out such maintenance within such period, the Board may cause such work to be done and may assess the cost thereof to such Owner as a Special Assessment.

7. Structural Violations. The Board shall have the right, whenever there shall have been built or placed on any Lot any Structure, or the erection or construction which is in violation of the covenants, conditions and restrictions set forth in this Declaration, and/or subject to a notice of noncompliance by the Design Review Committee, to enter upon the Lot where such violation exists and summarily abate or remove the same at the expense of the Owner of the Lot, as soon as found necessary by the Board after written notice of such proposed action is provided to the Owner, and any such entry and abatement or removal shall not be deemed to be trespass. All costs or expenses incurred in abating or removing such violation or complying with the Design Review Committee shall be paid by the Owner of such Lot as a Special Assessment.

8. Costs of Compliance. All costs, expenses and damages determined by the Board to be proximately caused by a deviation or violation of this Declaration, and costs and expenses incurred by the Association to correct the same, shall be assessed as a Special Assessment against the Owner of the Lot, which Special Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion.

9. Legal Proceedings. The Board is authorized on behalf of and in the name of the Association to commence such legal or equitable proceedings as are determined to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Declaration, and/or a notice from the Design Review Committee. The Board shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner, but thereafter the Board shall have the sole discretion to commence such proceedings.

10. Payment of Costs and Attorney Fees. In the event the Board and/or Association or any Owner shall prevail in any legal or equitable proceedings to enforce this

Declaration, all costs and attorney fees incurred in connection therewith shall be reimbursed to the prevailing party by the losing party. If the Association is the prevailing party, upon the failure of said Owner to reimburse the Association within ten (10) days after written demand therefore is mailed to the Owner, the Association shall have the right to levy a Special Assessment against the Owner which Special Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred by levying the Assessment. The Board shall also be entitled to collect from any Owner violating the provisions of this Declaration and/or any notice from the Design Review Committee of noncompliance, all costs and attorney fees incurred by the Board in enforcing this Declaration and/or such notice of noncompliance from the Design Review Committee without filing a legal action for enforcement, for filing a lien for past due assessments, and for foreclosure of an assessment lien; such costs and attorney fees may be assessed against the violating Owner as a Special Assessment, or may be collected in any other manner permitted by law.

11. Enforcement Costs. Costs, as herein provided, shall include expert witness fees, filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out legal or equitable proceedings.

12. Non-Exclusive Remedy. The enforcement rights of the Association, and/or the Board, as described herein shall not be deemed to be exclusive remedies of the Association and/or the Board. The Association and/or the Board may, in its sole discretion, without waiver of other legal or equitable remedies, pursue enforcement of its Assessment liens, proceed to collect any past due amounts directly from an Owner, and/or pursue any other remedies available at law or in equity.

13. Failure to Enforce. Failure, delay or omission by the Board and/or the Association to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter. No action shall be brought or maintained by any Owner, against the Grantor, the Association, the Board, the Design Review Committee or any of their officers, directors, members, agents or representatives for or on account of their failure to bring or take any action to enforce any of the Governing Documents or for imposing restrictions herein which may be unenforceable.

## **ARTICLE XI - MISCELLANEOUS PROVISIONS**

1. No Prescriptive or Implied Easements. An Owner, by acceptance of a deed to any Lot, waives all rights to claim prescriptive or implied easements as allowed by the laws of the State of Montana. No prescriptive or implied easement shall be created by the use of any part of the Property belonging to other Owners.

2. No Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property or of any Lot 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. Joint and Several Obligations. If any Owner is composed of more than one person, the obligations of those Owners shall be joint and several.

4. Grantor's Rights and Reservations. Grantor is undertaking the work of constructing the infrastructure and incidental improvements upon the Property to support the development of single-family residences on individual Lots included in the Property. The completion of that work is essential to the welfare of said Property as a residential community. In order that said work may be completed and said Property be established as a fully occupied residential community as rapidly as possible and in a prudent manner, nothing in this Declaration shall be understood or construed to: a) prevent Grantor, its contractors, or sub-contractors from going on the Property or any Lot thereof, as is reasonable, necessary, or advisable in connection with the completion of said work, and from conducting on any part of the Property its business of completing said work, or b) prevent Grantor or its representatives from erecting, constructing and maintaining on any part or parts of the Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work, and establishing said Property as a residential community, and disposing of said Property in parcels or Lots by sale or otherwise, or c) prevent Grantor from maintaining such signs, stakes, flags or advertising devices on any of the properties as may be necessary for the sale or disposition thereof.

Until Grantor no longer owns any Lot or Lots within the Property, the Grantor may, in its sole discretion, at any time and from time to time, make changes that the Grantor believes will better accomplish the objectives of The Timbers, adjust to market conditions, or respond to changing land use conditions both within and without The Timbers, including, without limitation, any of the following:

a. Development. Grantor may, in its sole discretion, at any time and from time to time:

- 1) Amend and modify any portion of this Declaration;
- 2) Amend and modify any portion of the Bylaws;
- 3) Add property to The Timbers;
- 4) Release all or any portion of The Timbers from the provisions of this Declaration; and
- 5) Change the use of any portion of The Timbers.

The Grantor may exercise any of the foregoing development rights by

executing and recording an amendment to this Declaration.

b. Reservation of Right to Receive Certain Funds. Grantor further reserves the right to receive any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided by it for joint main sewers, sanitary sewers, storm sewers, gas pipes, water pipes, conduits, poles, wires, street lights, roads, streets, traffic signals, recording fees, community fees, consultation fees, or any fees, charges, and expenses incurred with respect to the development and creation of The Timbers.

5. Limitation of Liability. Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations, or entities who constitute the Grantor, Association, and the Board, 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 Grantor, Association, or the Board, the Owner who seeks recovery 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 GRANTOR, ASSOCIATION, OR THE BOARD.**

6. Non-waiver. The various restrictions, measures and provisions of this Declaration are declared to constitute mutual equitable covenants and servitudes for the protection and benefit of each Lot in The Timbers, and failure by the Grantor, the Board, Association, Design Review Committee, or any other Person to enforce any measure or provisions upon violation thereof shall not stop or prevent enforcement thereafter or be deemed a waiver of the right to do so in the future. 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.

7. Severability. Each and every of the covenants, conditions and restrictions contained in this Declaration shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of such covenants, conditions or restrictions shall be held to be invalid, unenforceable or in conflict with any law of the jurisdiction in which the Property is situated, all remaining covenants, conditions or restrictions shall nevertheless remain unaffected and in full force and effect.

8. Conflict of Governing Documents. If there is any conflict among or

between the Governing Documents, the provisions of this Declaration shall prevail over the provisions of the Articles and Bylaws of the Association.

9. No Warranty of Enforceability. While Grantor has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Grantor makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in the Property in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Grantor harmless therefrom.

10. Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and its Members, the Association and the Members hereby waive and release all claims against one another, the Board of Directors and Grantor, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by negligence of or breach of any agreement by any of such Persons.

11. Grantor's Additional Rights. NOTWITHSTANDING THE FOREGOING, NO PROVISION OF THIS DECLARATION SHALL BE CONSTRUED AS TO PREVENT OR LIMIT GRANTOR'S RIGHT TO COMPLETE DEVELOPMENT OF THE PROPERTY AND TO CONSTRUCT IMPROVEMENTS THEREON OR RESTRICT GRANTOR'S RIGHT TO POST SIGNS INCIDENTAL TO CONSTRUCTION OR SALES.

## **ARTICLE XII - AMENDMENT AND TERMINATION OF THIS DECLARATION**

1. Amendment and Termination. Except as provided in this Agreement and subject to Section 3 below, this Declaration may not be amended or modified in any respect whatsoever or terminated, in whole or in part, except by a written resolution adopted by the vote, in person or by proxy, or written consent by Owners representing not less than seventy-five percent (75%) of the Lots.

2. Recordation of Changes. A certificate, signed and sworn to by two (2) members of the Board of Directors, stating that the Owners of the required number of Lots have either voted for or consented in writing to any amendment addition, deletion or termination adopted as provided above, when recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. Any changes to this Declaration shall be promptly recorded in the office of the Yellowstone County Clerk and Recorder.

3. Grantor Controls. Notwithstanding the foregoing, no such amendment or termination shall be effective without the written consent of Grantor, until Grantor no

longer owns any Lot or Lots within the Property.

**[SIGNATURE PAGE FOLLOWS]**

*[remainder of page intentionally left blank]*

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2023.

“GRANTOR” & “DEVELOPER”

Alkali Timbers, LLC  
a Montana limited liability company

\_\_\_\_\_  
By: Alison Mitchell, Authorized Member

STATE OF MONTANA     )  
  : ss.  
County of Yellowstone     )

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_,  
2023 by Alison Mitchell as Authorized Member of Alkali Timbers, LLC.

\_\_\_\_\_  
Signature of Notary Public