

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
MORNING SKY ESTATES**

This Declaration of Covenants, Conditions and Restrictions regulating and controlling the use and development of certain real property as hereinafter described is made to be effective this 14 day of November, 2005, by The Broadland Company, LLC, a Montana limited liability company, hereinafter referred to as "Declarant".

RECITALS

A. Declarant is the owner, or beneficial Owner of the following described land in Broadwater County, Montana:

See Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "Property").

B. Declarant intends to sell, dispose of, divide into lots, and convey the real property above described and

C. The Property contains wildlife habitat and is of high scenic and natural value, and Declarant is adopting the following Covenants, Conditions and Restrictions to preserve and maintain the natural character and value of the Property for the benefit of all Owners of the Property or any part thereof.

D. Declarant desires to subject all of said Property and the lots and subdivisions thereof to the protective and restrictive covenants, conditions, restrictions, guidelines and reservations herein set forth and referred to as "Covenants", each and all of which is and are for the benefit of said Property, lots, and subdivisions and the owners thereof, and shall run with the land applying to and binding the present owners and all future owners and successors in interest.

NOW, THEREFORE, Declarant, hereby declares that all of the Property described shall be owned, held, sold, conveyed, encumbered, leased, used, occupied and developed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner of any part thereof.

**ARTICLE I
DEFINITIONS**

1. "Association" shall mean and refer to Morning Sky Homeowners Association, a Montana Non-Profit Corporation, and its successors and assigns.

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2. "Board" shall mean the Board of Directors of the Association established to administer and enforce the terms and conditions of this Declaration as set forth herein.
3. "Common Area" shall mean the public and private roadways, parkland, perimeter fencing and all other property owned by the Association.
4. "Common Usage Area" shall mean any portion of a lot owned in fee simple, but with an easement to allow all other lot owners the use of the land.
5. "Development" shall mean any alterations of the natural land surface, and all buildings, structures or other site improvements placed on the land to accommodate the use of a lot.
6. "Governing Body" shall mean the Commissioners of Broadwater County, Montana.
7. "Lot" or "Lots" shall mean and refer to any of the single family residential plots of land described above and shown upon the recorded subdivision plat of the Property filed by the Declarant in the Office of the Broadwater County Clerk and Recorder.
8. "May" is permissive.
9. "Member" shall mean any person or entity owning or purchasing a lot in Morning Sky Estates. Each lot owner shall be a member of the Association and agrees to abide by and be bound by these Covenants, and the Articles of Incorporation, Bylaws, and Resolutions of the Association, if any.
10. "Owner" or "Lot Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any lot, including contract buyers and Owners of a beneficial interest, but excluding those having such interest merely as security for the performance of an obligation.
11. "Plat" shall mean the final plat of the Morning Sky Estates in Broadwater County, Montana, according to the official plat thereof on file and of record in the office of the Broadwater County Clerk and Recorder.
12. "Shall" is mandatory.
13. "Structure" shall mean anything built or placed on the ground, excluding fences and ground level features such as pathways or low profile patios contiguous to homes.

**ARTICLE II
MORNING SKY HOMEOWNERS' ASSOCIATION**

1. **Creation.** The Association shall be created as empowered pursuant to its Articles and Bylaws prior to the conveyance of any Lots, until such time Declarant shall have all the authority vested in the Association.
2. **Purpose of Association.** The Association will be formed as a non-profit corporation in accordance with Chapter 2 of Title 35, Montana Code Annotated for the purpose of enforcing these Covenants and operating the Association for the benefit of all members therein.

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3. **Bylaws of and for Association.** The Bylaws of and for Morning Sky Homeowners' Association establish membership in and the duties, powers, operations, and rights of the Association and the members therein. The Association shall be governed by and empowered to act in accordance with the Bylaws.

4. **Membership in Association.** Every person, group of persons, partnership, corporation, or other entity who is a fee owner of a Lot within Morning Sky Estates on file and of record in the office of the County Clerk and Recorder of Broadwater County, Montana, shall be a member of the Association. By this provision, each Lot as shown on the plat and amendments thereto shall entitle the Owner to one membership interest in the Association. Multiple Owners of a single Lot would have collectively one such membership or voting interest. If an Owner owns more than one Lot, that Owner would have one membership or voting interest for each separate Lot. Membership interest in the Association shall run with the land so that said interest is an incident to ownership beginning when ownership rights are acquired and terminating when such rights are divested. Accordingly, no Member shall be expelled, nor shall he be permitted to withdraw or resign while possessing a membership interest.

5. **Voting Rights.** The Association shall have one class of voting membership. The Members shall be all Owners with the exception of the Declarant. Members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE III DIRECTORS' MEMBERSHIP AND VOTING RIGHTS

1. **Board of Directors.** The initial Board of Directors shall consist of at least three (3) directors appointed by the Declarant. Until seventy-five percent (75%) of the Lots have been sold and title transferred to Owners, the Declarant reserves the right to appoint and remove all directors and to exercise the powers and responsibilities otherwise assigned by this Declaration to the Association. By express written declaration, Declarant shall have the option to at any time to turn over to the Association the total responsibility for electing and removing members of the Board. Upon Declarant turning over responsibility to the Association, the Association shall elect a new Board of Directors consisting of at least five (5) directors, all of whom shall be Lot Owners, and at least three (3) of which shall be residents of Broadwater County, Montana.

The Board of Directors and its officers, assistant officers, agents and employees acting in good faith on behalf of the Association:

- a. shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith;

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- b. shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such;
- c. shall have no personal liability in tort to any Owner or any person or entity, except for their own willful misconduct or bad faith; and
- d. shall have no personal liability arising out of the use, misuse or condition of the Property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

2. **Notice and Quorum For Any Authorized Action.** All Board of Director meetings shall require the presence of directors entitled to cast a minimum of fifty-five percent (55%) of all votes of the directors. The presence of directors entitled to cast fifty-five percent (55%) of all votes of the Board of Directors shall constitute a quorum.

3. **Meetings.** There shall be a minimum of one (1) meeting per year called by the Board of Directors at a date, time and place as shall be determined by the directors. In addition, the President of the Board of Directors has the right to call as many meetings as the President deems necessary in order to perform all functions of the Board of Directors in an efficient and professional manner.

4. **Hired Officers and Contractual Agreements.** The Board of Directors shall have the authority to hire additional professional officers or other personnel which they deem necessary for the smooth, efficient, and professional functioning of the Association. They may include, but not be limited to a manager, secretary, treasurer, accountant, and maintenance personnel. The Board of Directors shall also have the authority to make contractual arrangements with outside entities, including but not limited to an attorney, accountant, engineer, maintenance contractors, and building contractors to provide for the smooth, efficient, and professional functioning of the Association.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

1. **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed consents to the creation of a lien against the Owner's real property to the extent of non-payment of any assessment for maintenance or otherwise levied by the Association, therefore, whether or not it shall be so expressed in such deed, is deemed to have consented to be subject to these Covenants and agrees to pay to the Association:

- a. Operating assessments or charges; and
- b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

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The operating and capital assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, shall be the personal obligation of the entity or person who was the Owner of such property at the time when the assessment fell due, and shall be a continuing lien upon the property against which each such assessment is made.

2. **Purpose of Assessments.** The assessments levied by the Association shall be used for the improvement, repair, and maintenance of the main subdivision road(s) and any common trail system, for maintaining any fenced, landscaped or other common areas for which the Association is responsible, for maintenance of any common structures, for providing for snow removal, for the establishment of a reserve fund, and for promoting generally the enjoyment, standard of living and property values of the Members of the Association.

3. **Specific Obligations.** The Association's obligations shall include, but not be limited to, compliance with the weed management agreement entered into by Morning Sky and Broadwater County; contracting for private maintenance services to provide access to the subdivision for emergency service providers in winter; and maintenance of fire suppression measures, including the dry hydrants and/or storage tanks and ensuring that the fire suppression measures are maintained year-round. The Association shall have the power to make special assessments for these and other Association obligations.

ARTICLE V GENERAL PROVISIONS

1. **County Covenants.** Any covenant, which is included herein as a condition of preliminary plat approval and required by the Broadwater County Commission, may not be amended or revoked without the mutual consent of the Owners in accordance with the amendment procedures in these Covenants and the governing body of Broadwater County. These covenants are marked with an asterisk*.

2. **Notices of Agricultural Uses.** By these covenants, all owners are hereby informed that adjacent uses may be agricultural in nature; that standard agricultural practices can result in smoke, dust, animal orders, flies and machinery noise; and that standard agricultural practices feature the use of heavy equipment, burning, chemical sprays and the use of machinery early in the morning and late into the evening.

3. ***Weed Control.** Every Lot Owner shall be responsible for weed control on their property except for any portion under common use easement. The Association will be responsible for weed control on any common usage areas. Lot Owners and the Association shall comply with the requirements of the Weed Control Management Plan entered into between the Declarant and the Broadwater County Weed Board. Weeds shall be controlled on both unimproved and improved lots.

If a Lot Owner fails to control weeds on their property after notice from the Association or any persons in the subdivision, the weeds may be controlled, and the cost and expense

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associated with such weed maintenance shall be assessed the Lot. Such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment. The Association shall control weeds within the road easements. The control of noxious weeds by the Association on those areas for which the Association is responsible and the control of noxious weeds by individual Owners on their respective lots shall be as set forth and specified under the Montana Noxious Weed Control Act (7-22-2101 through 7-22-2153 MCA) and the rules and regulations of the Broadwater County Weed Control District.

4. **Compliance with Fire District Regulations.** All residents must provide adequate access routes for the Fire District. Standing and fallen vegetation surrounding all buildings must be cut, trimmed and/or reduced according to Fire District standards. Address signs shall be clearly visible to emergency vehicles from the adjacent street at all times.

5. **Common Areas.** All common areas shall be owned and maintained by the Association. The Association shall own the common areas, including the common tract, all interior roadways, and the fire suppression areas. These common areas will be deeded to the Association and the Association shall be responsible for maintenance of such areas and compliance with this Declaration, and the Bylaws, as they pertain to the Common Areas.

6. **General Maintenance.** The maintenance, alteration, replacement and/or repair of the open space, common roadways and any common trails shall be the responsibility of the Association. The Association shall maintain, repair and provide for snow removal and maintenance activities on all roadways constituting part of the Common Areas.

The maintenance, repair and replacement of all improvements on each lot shall be the responsibility of the Owner of such lot and not the Association, except as otherwise expressly set forth herein. All roads are to be maintained by the Association except for driveways leading to residences from roadways within the subdivision.*

Perimeter Fences shall be maintained by the Association in accordance with Montana laws, which requires that maintenance of boundary fences be shared with adjoining landowners on a 50/50 basis.

7. **Wildlife.** Owners, Owners' guests, licensees and invitees, and members of the public on the Property shall not harass wildlife. The feeding of all big game wildlife is prohibited. Lot Owners are encouraged to obtain educational pamphlets published by the Montana Department of Fish, Wildlife and Parks on "Living with Wildlife".

8. **Domestic Pets.** No domestic animals or fowl shall be maintained on any Lot except as provided herein. No more than two dogs and two cats may be kept and maintained on any single lot. Further, such animals shall be restrained and/or leashed at all times. If any animals are caught or identified chasing or otherwise harassing wildlife or people, the Association shall have the authority to have such animal or animals impounded at any available location, and shall assess a penalty against the owner of such animal or animals of not more than fifty dollars (\$50.00) plus all costs of impoundment on the first occasion. If any such animal or animals are

caught or identified chasing or harassing wildlife or people on a second occasion, the Association shall have the authority to have such animal or animals impounded or banished from the Property. The Association may assess a penalty of not more than five hundred dollars (\$500.00) per animal, plus costs of impoundment on such second occasion. No Owner of any animal or animals impounded, banished or destroyed for chasing or harassing wildlife or people shall have the right of action against the Association or any member thereof, for the impoundment, banishment or destruction of any such animal or animals.

9. **Driveways.** The construction and maintenance of all driveways and culverts shall be the responsibility of the Lot Owner. Any gravel and borrow materials brought onto the subdivision shall be purchased from a certified weed-free source. A lot may not have more than two (2) driveway approaches from the adjacent roadways.

10. **Utilities and Site Details.** Declarant shall cause the installation and maintenance of the electric power and telephone utility service to the junction of the main access road and driveways. Lots Owners shall bear all responsibility and costs of connecting electrical and telephone service to their residences from the main access road junction. It shall be the sole responsibility of the Owner to contact utility companies prior to any excavation and grading, including, but not limited to the following: Vigilante Electric, Qwest or any other appropriate utility providers.

11. **Water Supply.** Each residential building shall provide its own water supply system and such system shall conform to all applicable standards of the State of Montana, Broadwater County or any other regulatory agency.

12. **Condition of the Property.** The Owner of any Lot shall at all times keep it and the buildings, improvements and appurtenances thereon in a safe, clean and fit condition and comply, at their own expense, in all respects with all applicable governmental, health, fire and safety ordinances, regulations, requirements and directives. Further, the Owner and Occupant of any Lot shall at regular and frequent intervals remove at their own expense any rubbish of any character whatsoever that may accumulate upon such Lot. Lot Owners may contract with a private trash hauler or haul their trash to the Logan Landfill in Gallatin County. No junk vehicles shall be stored on the individual Lots or any other place on the Property.

13. **Maintenance of Grounds.** Each Owner shall be responsible for the maintenance and repair of all parking areas, driveways, walkways, and landscaped areas on their Lot. Such maintenance and repair shall include, without limitation:

a. Maintenance of all parking areas, driveways and walkways in a clean and safe condition, including the paving and repairing or resurfacing of such areas where necessary with the type of material originally installed thereon or such substitute therefore as shall, in all respects, be equal thereto in quality, appearance and durability; the removal of debris and waste material and the washing and sweeping of paved areas as required; painting and repainting of striping markers and directional signals as required;

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b. Cleaning, maintenance and relamping of any external lighting fixtures except such fixtures as may be the property of any public utility or government body; and

c. Performance of all necessary maintenance of all landscaping including the trimming, watering and fertilization of all grass, ground cover, shrubs or trees, removal of dead or waste materials, replacement of any dead or diseased grass, ground cover, shrubs or trees. Nothing contained herein shall preclude an Owner from recovering from any person liable therefore, damages to which such Owner might be entitled for any act or omission to act requiring an expenditure by the Owner for the maintenance and repair of the parking area, driveway, walkway and/or landscaped area on their Lot.

d. Unless the Owner personally performs the maintenance required hereunder, each Owner shall contract with the Declarant, the Association, or other contractor for performance of all landscaping and parking lot maintenance required hereby, and shall keep continuously on file with Declarant and/or Association a copy of the current maintenance agreement(s).

14. Remedies for Failure to Maintain and Repair.

a. Remedies. If any Owner shall fail to perform the maintenance and repair required herein, then Declarant and/or Association, after fifteen (15) days prior written notice to such delinquent Owner, shall have the right, but not the obligation, to perform such maintenance and repair and to charge the delinquent Owner with the cost of such work together with interest thereon at an annual rate equal to the maximum rate allowed under Montana law from the date of Declarant's and/or Association's advancement of funds for such work to the date of reimbursement of Declarant and/or Association by Owner. If the delinquent Owner shall fail to reimburse Declarant and/or Association for such costs and such costs shall remain unpaid for thirty (30) days after written notice to the delinquent Owner, Declarant and/or Association may file for and record a claim of lien signed by Declarant and/or Association for the amount of such charge together with interest thereon. The lien created by this section shall be effective to establish a lien against the interest of the delinquent Owner in their Lot together with interest at the rate provided above on the amount of such advance from the date thereof, costs of preparing and sending notices, recording fees, costs of title search obtained in connection with such lien or the foreclosure thereof, court costs and reasonable attorney's fees which may be incurred in the enforcement of such a lien.

b. Foreclosure of Lien. Such a lien, when so established against the Lot described in said claim, shall be prior or superior to any right, title, interest, lien or claim which may be or may have been acquired in or attached to the real property interests subject to the lien subsequent to the time of filing this Declaration. Such lien shall be for the benefit of Declarant and/or Association, their successors and assigns, and may be enforced and foreclosed in a like manner as a real estate mortgage is foreclosed in the State of Montana.

c. Cure. If a default to which a lien was filed is cured, Declarant and/or Association shall file or record a release of such lien, upon payment by the defaulting Owner of the cost of preparing and

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filing or recording such release, and other reasonable costs, interest or fees which have been incurred.

d. Nonexclusive Remedy. The right to lien and foreclose thereon shall be in addition to, and not in substitution for, all other rights and remedies which any party may have hereunder and by law, including any suit to recover a money judgment for unpaid assessments. If any Owner shall fail to perform such maintenance and repair and, notwithstanding such failure, Declarant and/or Association should fail to exercise its rights and remedies hereunder, then, the Association, after fifteen (15) days prior written notice to delinquent Owner, shall have the right, but not the obligation, to perform such maintenance and repair and shall have the same rights and remedies with respect thereto as are provided herein to the Declarant and/or Association.

15. **Exterior Lighting.** Exterior lighting shall be subdued, understated and indirect. Lighting, including yard lighting shall be a down type and shall not radiate out from the property. In all cases, excessive glare to neighboring properties or circulation shall be avoided. No twenty-four (24) hour yard lights shall be allowed. Lot Owners shall comply with the local night sky regulations and ordinances in effect in Broadwater County.

16. **Building Regulatory Compliance.**

a. Construction. Any construction on the Lots shall conform to the requirements of this Declaration and all applicable state and local building code requirements. Lot Owners are required to ensure their construction plans comply with the provision of the Uniform Building Code, National Plumbing Code and National Electric Code or their amendments, to the extent utilized in the community. The individual Lot Owner is responsible for compliance with all building codes and for obtaining all permits.

b. Planning Department Compliance Review. To the extent that Broadwater County has a process by which site plans and building plans are reviewed for compliance with the applicable County plans and requirements, each tract owner shall be responsible for ensuring compliance with the local review processes.

c. Septic System and Wells. Each tract owner in Morning Sky Estates in Broadwater County will be responsible for costs and installation of his or her own septic system and water system. No permanent, individual sewage or disposal system shall be permitted on the tract unless said system is located, constructed and equipped in accordance with the standards and regulations of the Montana Department of Environmental Quality, Broadwater County Sanitarian and other regulating authorities in effect on the date the system is constructed. Each tract owner shall obtain a septic permit from Broadwater County.

17. **Temporary Structures.** No temporary structures, trailers, campers, tents, shacks or similar structures shall be used on the premises for temporary or interim habitation. Recreational vehicles, visitors or campers may be parked and occupied for a period not to exceed one month in any one year period.

18. **Animals and Livestock.** Animals and livestock may not be raised, bred, or kept on any Lot, except that horses are permitted to be kept on certain lots as provided in this paragraph. Animals and livestock, includes, but is not limited to, cattle, hogs, swine, chickens, llamas, rabbits, pigeons, and fowl of any kind.

Owners shall be allowed to keep horses on Lots 14-29 of Morning Sky Estates while owning one of the following designed pairs of lots: 14-15, 16-17, 18-19, 20-21, 22-23, 24-25, 26-27, and 28-29 (referred to hereinafter as "Horse Lots"). The right to keep horses on any one of the aforementioned pairs of lots shall cease when one of the paired lots is sold, conveyed or otherwise transferred to a third party who does not also purchase the other paired lot. Keeping horses on Lots 14-29 of Morning Sky Estates is subject to the following restrictions:

a. An Owner of Horse Lots shall designate one (1) acre of their lots for the location of their residence. Horses shall not be kept or allowed to graze on the designated one (1) acre residence site.

b. Owners of Horse Lots shall be permitted to have up to four (4) horses.

c. Owners of Horse Lots shall keep and feed their horse(s) in a reasonable and customary manner as to not allow their Horse Lots to be overgrazed or otherwise damaged by their horses. If overgrazing occurs, the Association may require the Owner of the overgrazed Horse Lots to immediately cease and desist further grazing, and seed the overgrazed portions of their Horse Lots. If seeding is not completed within thirty (30) days of receipt of notice from the Association, the Association may enter upon the overgrazed Horse Lots and cause the same to be seeded at the expense of the Owner thereof. Such expense, if not paid by the Owner of the overgrazed Horse Lots within five (5) days of receipt of an invoice for the seeding services, shall become a lien against the Owner's lot, which may be foreclosed as allowed by law.

d. Owners of Horse Lots shall not keep, raise or breed horses for any commercial purpose.

e. All horses kept on Horse Lots shall be kept in a fenced enclosure, and suitably maintained insofar as their wellbeing is concerned at all times.

f. No stable, corral, pen or other confine to hold horses shall be constructed, installed or placed within 100 feet of a water source, or within 100 feet of any required setback.

g. Good horse husbandry shall be practiced by all Owners of Horse Lots keeping horses thereon.

19. **Variations.** The Association may allow reasonable variations and adjustments of the foregoing Covenants in order to overcome practical difficulties and prevent unnecessary hardships in the application of the Covenants contained herein, or to grant variations in regard to the requirements contained herein, for the purpose of enhancing views, utilizing a lot to better advantage; preventing the

removal of trees, and enhancing the placement of improvements on the Property, provided this may be done in conformity with the intent and purpose thereof, and also provided in every instance that such grants or adjustments shall not be materially detrimental or injurious to other portions of the Property or improvements in Morning Sky Estates. Notwithstanding the foregoing provision, no variance shall be allowed which has the effect of creating additional Lots.

20. **Reservation of Easements.** Declarant reserves the right to grant and/or dedicate an easement or easements in the streets, roads or at any other location on, over or across any Lot, common area, for water, sewer, natural gas, electrical, telephone, or cable TV for the installation, maintenance and repair of all such new or existing services and utilities.

21. **Right of Access.** The Association or its delegated representatives, or the Declarant shall have the irrevocable right to have access across a Lot or Lots to each residence, dwelling or improvement on any Lot from time to time during reasonable hours as may be necessary for the inspection, maintenance, repair, or replacement of any improvements thereon. Except for improvements owned by the Association or used by the Association for its benefit or that of its members, all maintenance, repairs, or replacements on any Lot or on any structure thereon belonging to any Owner shall, except as otherwise provided herein, be at the expense of the Owner thereof. A similar right of access shall also be reserved and be immediate for the making of emergency repairs therein in order to prevent property damage or personal injury. All damaged improvements shall be restored to substantially the same condition in which they existed prior to the damage. All maintenance, repairs, and replacements of the common areas, and roads shall be the common expense of the Association and all of the Owners, provided, however, if such damage is caused by a negligent or tortious act, then the applicable tortfeasor(s), including, but not limited to members of the General Public, shall be responsible and liable for all such damage.

ARTICLE VI BUILDING AND SITE DEVELOPMENT

1. **Intent of Design Criteria.** The primary goal is to ensure that the, proposed Improvements design including landscaping maintains or exceeds the general level of quality, size, appearance, and marketability as is commensurate to the quality residential lots and homes adjacent to it and in general. All initial or subsequent improvements to the privately owned Lots shall be subject to the following architectural and landscaping requirements and guidelines. Approval by the DRC shall be obtained prior to commencement of construction. The submittal requirements for review by the DRC are specified herein. The DRC shall have no power to approve any structure failing to meet, at minimum, the conditions set forth in this Declaration.

2. **General Regulations.** All lands within Morning Sky Estates are subject to the regulations of Broadwater County and the State of Montana except for any variances thereto granted by the Broadwater County, the State of Montana and approved by the Association. In addition to these regulations, building design may be regulated by County, State and Federal regulatory agencies having jurisdiction. The Owner or his or her agent shall be responsible to ensure conformance with any

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applicable regulations, and should check with the Broadwater County and State of Montana Building Codes Division to verify that the most recently adopted edition of any applicable regulation being used. No construction of, or alteration to, any improvements, whether temporary or permanent, including but not necessarily limited to buildings, fences, walls, earthwork, paving, vegetation, signs, or secondary structures such as utility or trash enclosure, antennas and storage tanks shall be commenced on any lot prior to receiving the written approval of the DRC. Interior modifications and/or improvements that do not alter the exterior appearance of a building, or the site improvements, shall not require the approval of the DRC.

3. **Density; Allowable Uses; Allowable Areas and Setbacks.**

a. Density. No more than one (1) single family residence may be built on each Lot, except for designated Horse Lots. Only one (1) single family residences may be built on the designated Horse Lots. One accessory building may be built on each Lot.

b. Allowable Uses. Each Lot shall be used exclusively for residential purposes, and no more than one family (including its servants and transient guests) shall occupy such residences; provided however that nothing in this subparagraph shall be deemed to prevent:

Any person from pursuing his or her calling upon within the dwelling unit owned by or occupied by such person if: (1) such person also used such dwelling unit for residential purposes, (2) is self-employed and has no employees working on such or in such dwelling unit, and (3) does not advertise any product, work for sale, or service provided to the public upon the applicable Lot or dwelling unit. The leasing of any Lot from time-to-time by the Owner thereof is subject to any and all restrictions as may be adopted from time-to-time by the Association.

Home occupations or professions shall be allowed on Lots in Morning Sky Estates. No advertising or director signs relating to a home occupation or profession shall be allowed within the private, public or commonly held lands within Morning Sky Subdivision.

c. Buildable Area. Each lot in Morning Sky Estates shall have a buildable area determined by building or structure setbacks. All construction other than landscaping improvements shall be limited to this buildable area.

d. Building Setbacks. Unless otherwise specified, the setbacks from the lot boundaries shall be as follows:

- i. front yards - 50 feet;
- ii. side yards - 50 feet; and
- iii. rear yards - 50 feet.

4. **Height Limits.** The maximum building height for a building is thirty four (34) feet.

5. **Minimum and Maximum Residence Sizes.**

a. Minimum. Each Lot shall provide the minimum living space exclusive of garages, decks, porches, and carports of 1,500 square feet.

b. Maximum. The maximum building size of the single family residence is 6,000 square feet exclusive of exclusive of garages, decks, porches, and carports.

**ARTICLE VII
BUILDING GUIDELINES**

1. **Intent.** The intent of the following Building Guidelines is to provide for a degree of continuity throughout Morning Sky Estates while allowing personal taste in choice of housing style.

2. **Roof Pitches.** The minimum roof pitch shall be 6:12 for the major components of any roof. Minor components and secondary roof structures, such as shed roofs and dormer roofs may have pitches as low as 4:12. No component of any roof shall have a pitch less than 4:12. Although, under certain special circumstances the roof design may incorporate as a minor component of the overall roof design a flat roof. The existing improvements on Lot 50 shall be exempt from compliance with the pitch requirements stated in this paragraph.

3. **Roofing Materials.** Recommended roofing materials are natural cedar shakes or shingles, or tile. Fiberglass or asphalt composition shingles in an "architectural" grade are acceptable with approval from the DRC. Other materials may also be considered, but must have written approval from the DRC. Notwithstanding, metal roofs are prohibited.

4. **Roof Mounted Equipment and Ventilating Roof Protections.** All roof mounted equipment shall be integrated into the overall roof design and screened. All sewer, bath fan, hot water heater, wood or gas stove, or other roof venting stacks shall be painted a color as similar as possible to the roof material color.

5. **Exterior Walls.** The exterior walls are one of the most important aesthetic elements in the building design and will reflect the image of the entire subdivision. Elements of specific concern are scale, proportion, texture and color. The scale and proportion of the exterior walls must have inherent interest and diversity, and harmonize with the high quality nature of the subdivision. All homes will be of new construction. No manufactured, mobile, pre-assembled, modular homes or log homes are allowed. Log accents are permitted with review and approval of the DRC.

a. Material. The materials that are acceptable to provide the desired texture are real stone and brick, wood siding which is painted or stained, and stucco. Color lok siding may be acceptable provided it is of high quality and simulates wood materials faithfully but will only be considered on a case by case basis, approved by the DRC. Vinyl siding, aluminum siding, and plywood siding, such as T1-11 is unacceptable. Simulated stone and new building materials that

maintain the aesthetic character of the subdivision will be considered by the DRC.

b. Colors. The colors used shall be earth tones and should harmonize and compliment the surrounding site and neighboring buildings. Off whites, shades of grey, as well as pale blue and green are considered acceptable. Trim may be more colorful and contrasting in order to add visual interest.

c. Concrete. Exposed concrete shall be limited to a maximum of 8 inches from the bottom of the siding to the finish grade. Exposures of more than 8 inches shall be covered by shrubs, masonry veneer, texture concrete surface such as exposed aggregate or synthetic stucco.

d. Chimneys. Chimneys, other than those used to ventilate heating system exhausts, may exit the building on an exterior wall or within the structure. When part of an exterior wall they may be used as an accent form to break up the mass of the wall. They shall be of a material that compliments other exterior finishes. Acceptable materials include brick, natural stone, stucco, or wood framing when the finished wood material is the same as the siding.

e. Wall Form. No wall shall consist of a single finish treatment for more than 14 horizontal feet without interruption by a wall projection or a different siding material, window, wall corner, chimney, wall recess, porch or other architectural form that adds interest.

6. **Decks, Balconies and Porches.** Decks, balconies and porches shall be designed to enhance the overall architecture of the building by creating variety and detail on exterior elevations. Combinations of covered decks, projecting balconies and bay windows shall be encouraged.

Low level decks shall be skirted to grade. Decks which are on the second story (that are not cantilevered) and high off the ground shall either be sided down to a continuous concrete grade beam and sided with the same siding as the main body of the structure, or they shall be required to have additional mass and size in the vertical support posts and a soffit treatment to the under side of the deck which is approved by the DRC.

7. **Garages and Parking.** Each single family residence is required to have a minimum of an attached two (2) car garage with a sectional roll up door (s). There will be no long term storage of cars or other vehicles outside the garage.

8. **Accessory Buildings.** An accessory building, such as a barn or storage shed, shall be detached from the residence and used for purposes which are incidental and subordinate to the residential use. An accessory building shall not exceed the lesser of 70% of the square footage of the single family residence or two thousand (2000) square feet, provided, however, the size of the accessory building on Lot 50 shall be allowed to be up to two thousand four hundred (2400) square feet. Accessory buildings may have metal siding, subject to approval by the DRC. All accessory buildings shall be constructed of materials, and in a manner which aesthetically match and complement the other improvements (i.e. residence) constructed on the applicable Lot.

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9. ***FireWise Construction and Landscaping Standards.** Prior to new construction it is recommend that Lot Owners contact the local fire department or the planning office for information on firewise building and landscaping practices. The following checklist shall be observed for fire protection:

a. When constructing, renovating, or adding to a residence, consideration shall be given to the following:

i. Choose a firewise location.

- Slope of terrain; be sure to build on the most level portion of the land, since fire spreads more rapidly on even minor slopes.
- Set your single-story structure at least 30 feet back from any ridge or cliff; increase distance if your home will be higher than one story.

ii. Design and build a firewise structure.

- Use construction materials that are fire-resistant or non-combustible whenever possible.
- For roof construction, consider using materials such as Class-A asphalt shingles, slate or clay tile, cement and concrete products, or terra-cotta tiles.
- Constructing a fire-resistant sub-roof can add protection as well.
- On exterior wall facing, fire resistive materials such as stucco or masonry are much better choices than vinyl which can soften and melt.
- Window materials and size are important. Smaller panes hold up better in their frames than larger ones. Double pane glass and tempered glass are more reliable and effective heat barriers than single pane glass. Plastic skylights can melt.
- Install non-flammable shutters on windows and skylights.
- To prevent sparks from entering your home through vents, cover exterior attic and underfloor vents with wire screening no larger than 1/8 of an inch mesh. Make sure undereave and soffit vents are as close as possible to the roof line. Box in eaves, but be sure to provide adequate ventilation to prevent condensation.
- Include a driveway that is wide enough to provide easy access for fire engines (12 feet wide with a vertical clearance of 15 feet and a slope that is less than 5 percent) . The driveway and access roads should be well-maintained, clearly marked, and include ample turnaround space near the house. Also provide easy access to fire service water supplies, whenever possible.

- Provide at least two ground level doors for easy and safe exit and at least two means of escape (i.e., doors or windows) in each room so that everyone has a way out.
 - Keep gutters, eaves, and roofs clear of leaves and other debris.
 - Make periodic inspections of your home, looking for deterioration such as breaks and spaces between roof tiles, warping wood, or cracks and crevices in the structure.
 - Periodically inspect your property, clearing dead wood and dense vegetation at distance of at least 30 feet from your house. Move firewood away from the house or attachments like fences or decks.
- iii. Employ firewise landscaping and maintenance.
- If you wish to attach an all-wood fence to your house, use masonry or metal as a protective barrier between the fence and house.
 - Use metal when constructing a trellis and cover it with high-moisture, low flammability vegetation.
 - Prevent combustible materials and debris from accumulating beneath patio decks or elevated porches. Screen or box-in areas below patios and decks with wire screen no larger than 1/8 inch mesh.
 - Make sure an elevated wooden deck is not located at the top of a hill where it will be in direct line of a fire moving up slope. Consider a terrace instead.

**ARTICLE VIII
SITE DEVELOPMENT AND LANDSCAPE GUIDELINES**

All site improvement plans shall be reviewed and approved by the DRC prior to commencement of construction or alteration. Minor adjustments to the homesite and landscaping after initial construction shall not require submittal of plans. Minor adjustments shall include replacement of dead or dying vegetation and the addition of trees, shrubs or other landscaping features providing that such additions are consistent with the Site Development and Landscape Guidelines.

1. **Driveways.** All driveways and parking areas shall be surfaced with asphalt, concrete or an approved road mix.
2. **Antennas and Satellite Dishes.** Smaller dishes of the latest technology (not exceeding two feet in diameter) will be the only kind allowed. These dishes must be hidden from view and shall require DRC approval.
3. **Utilities.** All utilities including, but not limited to, natural gas, electricity, telephone and cable T.V. shall be located underground.

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4. **Storage Sheds.** Storage needs should be anticipated in the planning stage and will be required to be an integral part of the design of the residence, and in appropriate proportion and appearance thereto.

5. **Recreational Vehicles.** Trailers, motor homes, boats, snowmobiles, campers, motorcycles, and other recreational vehicles may be stored on the lot as long as they are not used for habitation, and only if they are stored completely out of sight from all directions within an attached, covered structure which is aesthetically acceptable to the DRC.

6. **Mail Boxes.** Individual mail boxes will not be allowed. Mail boxes will be clustered at strategic locations to simplify mail delivery and reduce streetscape clutter. Mail box clusters will be of a location approved by the Association.

7. **Construction Debris, Materials Storage and Clean-up.** Construction materials shall not at any time prior to or during construction be placed or store in the roads or placed anywhere else so as to impede, obstruct or interfere with pedestrians within the street right-of-way. All construction materials shall be removed from the entire lot within thirty (30) days of substantial completion of construction.

Construction sites shall be kept clean, neat, and well organized at all times. Any construction debris shall be the responsibility of the Building Contractor and Lot Owner, and shall be properly discarded or stored on a daily basis. If construction debris blows onto another owner's Lot or the common areas it is the responsibility of the Building Contractor to clean it up immediately. Any construction debris, and most especially dirt, gravel, rocks, and concrete which find their way into the roads shall be removed immediately from the streets or common areas and such road(s) shall be brought back to a broom clean condition or clean-up costs and a fine may be levied and enforced against the associated Lot Owner.

8. **Signs.** Signs shall not be permitted on the private, public or commonly owned lands within Morning Sky Subdivision except as follows:

a. One address and family name sign shall be allowed. It shall be no more than two (2) square feet of surface area, and must be attached to the principal residence.

b. Temporary construction signs shall be allowed on the same Lot as the construction activity provided that they are removed upon substantial completion of the home.

c. One temporary sign advertising a Lot or home for sale shall be allowed providing that it does not exceed 6 square feet on any one face, and that it is removed when the Lot or home is sold. The sign must be placed on the Lot that is for sale.

d. Directory signs may be placed within the common areas as the Association decides is necessary. Directory signs must no more than three (3) square feet in surface area and made of wood.

e. During the period in which the property is being sold, the Declarant may erect "Subdivision for Sale" type signs in the common areas or other locations as deemed necessary.

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a rainfall or water application that distributes at least three-fourths of an inch of water. During the winter months, the wait is even longer since most plants are not actively growing.

c. Selection of Water-Wise Plants

- Decide on the trees, shrubs and ground covers for your water-wise landscape based on their natural ability to grow well in your area. Select plants that do well with little or no addition of water.

d. When To Water

- Many landscape plants demonstrate their need for water by wilting. If they continue to wilt during the evening, water them the following morning. Some herbaceous plants such as impatiens, typically wilt during the heat of the day even though the soil contains adequate moisture. These plants transpire (ie, they lose water vapor from their leaves and stems) faster than their root systems can absorb water from the soil. There is no need to water these plants unless they remain wilted during the evening.
- Some plants show no early symptoms of drought stress. If drought conditions continue, however, they may exhibit injury symptoms such as browning of leaf margins or tips and/or leaf drop. Plants should be watered before the appearance of injury symptoms, since at this stage of drought stress they may become severely damaged or even die.

e. How Much Water To Apply

- When water is needed it should be applied in sufficient quantity to moisten the soil to a depth of 10-12 inches for shrubs and trees and 6-8 inches for annual flowers. Light sprinklings waste water and do little to satisfy the water requirements of a plant growing in hot, dry soil. Plants watered in this way often develop shallow root systems increasing their susceptibility to damage if watering is interrupted for a few days.

f. Watering Methods

- Water should be applied only as fast as the soil can absorb it. A slow trickle or drip for several hours is best. Make sure no water is washing or flowing away. Using a hose with water pressure at full force can do more damage than good.
- Whether you are using a sprinkler attached to a hose or an automatic sprinkler system in the ground, the efficiency of the system depends on how well it is managed. In both cases wait to move or shut off the

f. An approved address plaque shall be installed and maintained by each Lot Owner at the driveway approach onto the internal access road. The plaques shall conform to the specifications for road identification signs according to Broadwater County requirements and be assigned by the Broadwater County addressing coordinator.*

9. ***Water Conservation Landscaping Regulations.** Lot Owners shall attempt to conserve water by instituting water conservation measures in planning, installing and maintaining their landscaping.

a. Water conserving features Lot Owners you may choose to use in your plan include:

- Limiting the amount of lawn area and locating turf where it will be used (such as play areas). Use drought-tolerant turf mixes (turf is the biggest water user in the landscape). As an alternative to turf, use mulch and tough, drought-tolerant groundcovers.
- Using surfacing materials for patios and walks that allow water penetration into the ground and that reduce sun glare and heat build up. Examples are wood decks; brick or stone on a sand base for patios; and wood chips, pea gravel, or stepping stones on a sand base for paths and walks.
- Grouping plants with similar cultural requirements (sun, moisture, soil, etc.)
- Using native drought-tolerant or resistant species of plants.
- Grouping together and limiting the use of water-loving plants. Place these plants in shaded, moisture-conserving areas or where they will have a high visual impact. For color in the landscape, use flowering trees, shrubs, perennials and groundcovers and plants with variegated foliage as an alternative to annuals that require more care and water.
- Matching the plant's water requirements with the soil moisture-holding capacity, for example, drought tolerant plants under eaves where the soil is always dry.
- Mulching planting beds to conserve soil moisture, control competitive weeds and improve soil conditions as the mulch deteriorates.

b. Plant Bed Preparation.

- Good soil is the basis for healthy plants and optimum use of water. All landscape plants should be planted in soils that have been carefully prepared or amended with organic matter. This alone will reduce watering needs by almost half because of the better penetration, distribution and retention of moisture. Preparation generally consists of deep spading, plowing or rototilling. The addition of organic matter such as compost, shredded leaves or other fine organic matter at this time will help increase the water penetration rate and holds moisture's later demands. During the summer, established plants will not need water for five to seven days after

sprinkler until one inch of water has been applied. If moved too soon, water will not reach the root zone. If the sprinkler runs too long, water passes through the root zone and is wasted. With heavy clay soil you may need to run the system fast until runoff just begins, then stop the system and allow the water to move down into the soil before turning the system back on to achieve that 1 inch delivery.

- Ground sprinkler systems operated on a time clock are easy but wasteful. The time clock turns the system on in rain or sunshine, irrespective of whether the plants need water. A sprinkler system may be manually controlled by setting the time clock to the off position and switching the system on when the plants need water.
- Another watering method is drip or trickle irrigation. Drip irrigation provides plants with a constant supply of water by means of plastic tubing located on or below the ground surfaces. Wetting only the root zone results in dramatic water savings, limits weeds and accelerates plant growth. Since the plant is not subject to the wet and dry cycles typical of other irrigation methods, it develops more rapidly.

g. Other Tips For Conserving Water

- Control all weeds. Weeds use water that would otherwise be available for desirable plants.
- A mulch of 3 inches of pine straw, pine bark, leaves or similar material will prevent crushing of the soil, fluctuating in soil temperature and evaporation of moisture.
- Reduce the number of fertilizer applications. Fertilizer promotes plant growth, increasing the need for water.
- Cull plants that are growing poorly. Don't waste water caring for marginal, undesirable plants.
- Leaving shrubs in their natural form reduces stress to the plants and therefore, lessens their need for water - avoid heavy pruning.

**ARTICLE IX
DESIGN REVIEW COMMITTEE**

1. **Committee.** The Design Review Committee (hereinafter "DRC") shall consist of a minimum of three (3) persons who shall have authority to act hereunder. Initially, the DRC members shall be appointed by the Declarant. The Declarant's appointees will serve until the duties are turned over to Association. The DRC reserves the right to require reasonable fees to be paid with the filing of the plans and specifications and the issuance of building approvals. The DRC shall have fifteen (15) days from the day a complete set of plans are received to either deny or approve said plans.

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2. **Submission of Plans before Construction.** No onsite clearing or construction shall be commenced until the complete plans and specifications for each development including plans for architecture, landscape and water/sewer placement, have been submitted to and approved in writing by the DRC. All three plans must be submitted at the same time.

- a. **Architectural.** The Architectural Plan shall consist of a to-scale drawing of the improvements with sufficient detail and information for the DRC to determine its location, size, design, color, and use. Said plans and specifications shall include but not be limited to the following: (1) site plan of the lot; (2) designs, dimensions, and locations; (3) principal materials and color schemes to be used; (4) dimensions of exterior walls, windows and doors; (5) description of fences, lighting, and parking.
- b. **Landscape.** The Landscaping Plan shall indicate the footprint for the buildings, the flatwork, and all landscaping features including ponds or other water-retaining structures.
- c. **Water/Sewer.** A Water/Sewer Site Plan must be submitted on 8.5" x 11" paper. This plan must be submitted to the DRC and approved prior to applying to the county for a tank-setting permit.

3. **Approval of Construction Plans.** Any site plan that is approved shall be completed in strict accordance with the approved plans and specifications. Any deviation from said plans that is a substantial detriment to the appearance of the structure or the surrounding area in the sole judgment of the DRC, shall be corrected to conform to the plan as submitted. Once approval of the plans is granted, the builder must commence construction within six (6) months. Any changes or alterations in the approved plans must be resubmitted to the DRC.

4. **Completion Times.** Construction of any building shall be completed within one (1) year after construction begins. If it is not completed within said time period, the plans must be resubmitted to the DRC.

5. **Failure to Approve.** In the event the DRC fails to approve or disapprove such design, location, construction and materials within fifteen (15) days after the detailed plans and specifications have been submitted, approval shall not be required and this article will be deemed to have been fully satisfied. Construction may commence in accordance with said plan, provided that the structure and plan conforms to the minimum building and use restrictions; and the other stipulations set forth in these covenants are met.

6. **Liability.** Neither the Association, nor the DRC, nor the individual members thereof, may be held liable to any person for any damages or any action taken pursuant to these covenants, including, but not by way of limitation, damages which may result from assessments, correction, amendment, changes, or rejection of plans, the issuance of building permits, or any delays, associated with such action on the part of the DRC, association or individual members thereof.