

Section II – Part G Draft CC&R's



Draft Codes, Covenants, and Restrictions

Table of Contents

Introduction

Declaration

I. Definitions	2-3
II. Confidentiality	3-4
III. Village at Amsterdam Property Owners' Association	4-6
IV. Annual and Special Assessments	6-7
V. Design Guidelines	8
VI. Property Use and General Covenants	8-11
VII. Emergency Services	11
VIII. Open Spaces	11-12
IX. Utilities Installation and Maintenance	12
X. Term, Enforcement, Applicability and Change Enforcement	13-15
XI. Village at Amsterdam Design Review Committee (DRC)	15-16
XII. Zoning Regulations and Codes	16-18
XII. Construction Procedures	19-20
XIV. Waiver	21
XV. Amendment	21
XVI. Severability	21
XVII. Design Review Process	21-22

Introduction to these Codes, Covenants and Restrictions

The purpose of this document is to provide owners in Village at Amsterdam by providing a framework for design, construction, maintenance, and use of their home and/or property within the subdivision. This will allow each project to contribute to the long-term goal of creating a development that compliments and enhances the surrounding natural environment. This document also explains the rules and restrictions that are intended to protect the landscape, wildlife, and use of property for the enjoyment of all owners in Village at Amsterdam. This document also outlines appropriate architectural elements that reflect the specific context and environment of Village at Amsterdam.

Variances may be granted if the plan embodies excellent architectural design and meets the overall philosophy of the Village at Amsterdam Design Guidelines.

Specific Objectives:

- To protect and enhance the natural environment, wildlife and property values
- To respect environmental conditions and neighbors.
- To establish architectural criteria for buildings which allow for individual expression, within clearly defined restraints.
- To address all aspects of community usage and design, including, but not limited to, buildings, landscaping, maintenance, water usage, fences, and signs.

Article I of the Declaration of Covenants, Conditions, and Restrictions of Village at Amsterdam contains protective covenants, conditions, and restrictions to preserve and maintain the natural and agrarian character and value of the Property for the benefit of all owners of the property or any part thereon.

Article I

Definitions

Section 1. The term “Covenants” shall refer to the Codes, Covenants and Restrictions (this document).

Section 2. The terms “Association” and “POA” shall mean the Village at Amsterdam Property Owners’ Association. The Association may be incorporated as a Montana nonprofit corporation, with its members as the lot owners.

Section 2. The term “member” shall mean any owner or lot owner. Each member or owner agrees to abide and be bound by these Covenants, the Articles of Incorporation, and the Bylaws and the Resolutions of the Property Owners’ Association, if any. The phrase Property Owner’s Association shall be referred to as POA from hereon.

Section 3. The term “owner” or “lot owner” shall mean any person or entity owning a fee simple interest in a lot or a contract purchaser, whether one or more persons or entities, owning or purchasing a lot, but excluding those having a mortgage or an interest merely as security for the performance of an obligation; provided, however, that prior to first conveyance of a lot for value, the term “owner” shall mean “Declarant” or its successors or assigns. The term “person” hereinafter shall include any person, persons or entities.

Section 4. The term “contract purchaser” shall mean a person buying a lot pursuant to a contract for deed, Montana Trust Indenture or mortgage.

Section 5. The terms “properties” and “lots” shall mean all of the real property herein described and subsequently surveyed and platted into lots as Village at Amsterdam, according to the official plats thereof filed of record in the office of the Clerk and Recorder of Gallatin County, Montana.

Section 6. The term “Directors” shall mean the Board of Directors of the Association, and shall consist of President, Vice President and a Secretary/Treasurer who shall be elected at the annual meeting by a simple majority of the members of the Association. The Board of Directors shall be elected for a term set by a simple majority of the membership, but not less than one year. Any vacancy in the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining Directors.

The Directors shall have the authority to act on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association and enforce these Covenants. The Directors shall act by simple majority vote. The officers of the Association shall follow the directions of the majority vote of the Directors.

Until 75% of the lots in Village at Amsterdam have been sold or seven (7) years after the final plat approval, whichever occurs later, the Declarant shall have the right to appoint the Board of Directors, who shall not be required to be lot owners or members of the Association.

Section 7. The term “Declarant” shall mean and refer to CTA Architects Engineers, and its successors and assigns.

Section 8. The term “Open Space” or “Common Area” shall mean all of the property conveyed to the Association for use by the Association and its Members and Owners in common including roads, trails, parks and waterways.

Section 9. The term “Majority” shall refer to 51% of cast votes in reference to the Association, its members and its Owners.

Section 10. The term “Financial Hardship” shall refer to the negative effects of required construction or design procedures that force termination of a project unnecessarily.

Section 11. Other definitions may be found throughout these covenants and those covenants are binding upon all owners. Any term not specifically defined shall be deemed to have a common and ordinary meaning.

Section 12. The term “Proxy” shall refer to authorization to act as a substitute for the POA in terms of voting.

Article II

Confidentiality

Village at Amsterdam and its associated POA shall enforce confidentiality at all times. Reasons for this confidentiality include:

-Owners have a reasonable right to privacy.

-An owner could be harmed by an unjust accusation of a violation.

-Owners who report violations should be able to do so in the knowledge that they can do so without harm. The worst case to guard against would involve a reported violator seeking reprisal.

-Privacy facilitates interaction between the Association and a reported violator. Communication can be less guarded and more direct than it would be with a public process.

-Mutual privacy helps the Association to sort out the facts in neighbor-against-neighbor disputes. Mutual complaints and counter-complaints from next-door neighbors sometimes arise; sometimes these are legitimate, sometimes they are exaggerated or fabricated. Maintenance of privacy helps to sort out facts from feelings in such cases.

-Confidentiality guards against adverse publicity and public misunderstanding for individual owners and for the Association.

Anonymity in reporting violations: It is required that those who report Covenants violations to the association disclose their identity, but careful protection of their public anonymity is upheld. Violation reports shall be submitted in writing and signed, follow up on reports submitted anonymously to the Association does not normally occur. There are several reasons for this policy:

-Requirement for signed written reports allows contact to the reporter when additional information is needed. If an anonymous report is not specific enough, there is no recourse for follow up.

-Requiring disclosure of a violation reporter's identity to the Association significantly reduces the number of frivolous or unnecessary complaints submitted. Anonymous complaints are often signs of grudges rather than legitimate violations.

-The Association cannot initiate enforcement action without due cause; written complaints document that cause. This helps internally within the Association. Directors who must act on any given problem can be assured of a reliable rendition of the complaint exists. If the matter results in legal action, written documentation exists.

-Maintaining public anonymity helps to protect from any form of retaliation.

Article III

Village at Amsterdam Property Owners' Association

Section 1. An association is hereby established known as the "Village at Amsterdam Property Owners' Association," herein after referred to as the POA. Said Association may be incorporated under a different name as may be approved by the Montana Secretary of State.

Section 2. Every owner or contract purchaser of a lot shall be a member of the Village at Amsterdam Property Owners' Association. Membership shall be appurtenant to and may not be separate from the ownership of any lot. Each owner shall be responsible for advising the Association of their acquisition of ownership, of their mailing address, and of any changes of ownership or mailing address. The initial address of the Association shall be 411 East Main Street Suite 101, Bozeman, MT, 59715. The address of the Association may be changed by the Board of Directors upon notice to the owners.

Section 3. For the purpose of determining membership, any meeting of a person or entity shall be deemed to be a member upon the recording of a duly executed deed to that owner, or upon the recording of Notice of Purchaser's Interest or an Abstract of Contract for Deed showing a contract purchase by an owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership.

Foreclosure of a mortgage, trust indenture or the termination of foreclosure of a contract for deed wherein title is vested in the mortgage, beneficiary or original sell on a contract, or repossession for any reason of a lot or unit sold under a contract shall terminate the vendee's membership, whereupon all rights to such membership shall vest in the legal owner.

Section 4. The annual meeting of the Association shall occur annually on the first Monday of March.

Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, a special meeting shall be held upon call of 50% of the owners. Special meetings shall require seven (7) days' notice, in writing. Notice of annual and special meetings shall be mailed to owners at the address for each owner as provided pursuant to Section 2 of this Article. The presence of members, in person or by written proxy, representing 60% of the total votes of the membership shall constitute a quorum.

At the annual meeting, the members shall review and approve a budget for the next year, shall elect

Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association. The members shall have the authority to set the number of Directors, which number shall not be less than three (3) nor more than seven (7).

Section 5. The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the members. At the annual meeting, the Directors shall elect a President, Vice-President, and Secretary/Treasurer for the Association from among the Directors, except that the Secretary/Treasurer may be a member who is not a Director.

Section 6. The Board of Directors shall serve for a term to be set by a simple majority of the membership, which shall not be for less than one year. Each director shall serve until replaced by his or her successor. Any vacancy on the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining directors.

Section 7. The Board of Directors shall have the power and responsibility of acting on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association, including but not limited to take such actions as shall be necessary or reasonable to care for, protect and maintain the easements, trails, boundary fences, drainage easements, open spaces; to enforce these Covenants; to collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve.

The Directors shall act by majority vote.

Section 8. The duties of each of the offices shall be as follows:

President – The President shall preside over all meetings of the POA. He or she shall call the membership together whenever necessary. The President shall be the general administrative and executive officer of the POA, and shall perform such duties as may be specified, and exercise such powers as may be delegated to the office of President by the Board of Directors.

Vice-President – The Vice-President shall exercise the powers of the President in the absence of the President.

Secretary – The Secretary shall give notice of all meetings of the POA, and shall keep a record of the proceedings of the meetings of the POA. The Secretary shall be authorized to sign on behalf of the POA, all records, documents and instruments when such are authorized to be signed by the POA.

Treasurer – The Treasurer shall keep and maintain adequate and correct accounts of the accounts, properties, and business of the POA, including accounts of its assets, liabilities, receipts, disbursements, gains and losses of the POA. The Treasurer shall prepare and report such periodic accountings as shall be required by the POA.

Commercial Representative – The Commercial Representative shall provide information and concerns related specifically to the Neighborhood Commercial zone, as indicated on Final Plat. The Commercial Representative shall carry out actions for all business Owners within Village at Amsterdam.

Section 9. A vacancy in any office of the Association shall be filled by appointment by the Board of Directors at the next annual meeting or the successor duly appointed or elected.

Article IV

Annual and Special Assessments

Section 1. Assessments

Each owner, whether or not it shall be so expressed in any deed or contract, is deemed to have agreed to these Covenants, and to pay to the Association:

- Monthly or Annual assessments or charges; and
- Special assessments for capital improvements and reserve assessments, such assessments to be established and collected as hereinafter provided.

The monthly or annual, special and reserve assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each assessment, together with the interest, costs and reasonable attorney's fees, shall be the personal obligation of the owner of such property at the time when the assessments are due.

Section 2. Purpose of Assessments

The assessments levied by the Association shall be used to promote the recreation, health, safety, convenience, and welfare of the owners; for the improvement of roads, repair and maintenance of easements, trails, open space; and for any other purposes, expressed or implied, in these Covenants.. The annual assessment shall reflect the imposition of an operating assessment upon the lots connected to the community sewer and water system.

Section 3. Amount and Approval of Assessments

The maximum annual assessment per lot which may be made by the Association in every calendar year shall not substantially exceed the projected and budgeted actual and reasonable costs to be incurred by the Association during the coming year in carrying out the purposes herein set forth, and may include a reasonable reserve for contingencies. The amount of the annual assessments shall be fixed by the Board of Directors of the Association in the following manner:

At each annual meeting of the members of the Association, the Directors shall present a proposed budget of the estimated expenses for the Association for the coming year to the members for review, discussion, amendment, comment and approval. The members shall approve or amend the proposed budget by a majority vote of the members present or voting by proxy. After the annual meeting, the Board of Directors shall set the amount of the assessments and the date(s) due for the coming year to cover the budget approved in the manner herein set forth.

Section 4. Special Assessments for Capital Improvements and Reserve Assessments

In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or other capital improvements on the properties and open space, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) or more of all of the votes of the members who are present, in person or by proxy, at a meeting duly called for that purpose. Special assessments may be levied to be paid over one or more years. Assessments for normal maintenance and repairs shall not require two-thirds (2/3) vote.

The Association may levy reserve assessments for the replacement and upkeep of the improvements enjoyed by the Association members. Reserve assessments need not be levied against all lots during any budget cycle provided that any such assessment shall have the approval of two-thirds (2/3) or more of all the votes of the members being assessed, who are present, in person or by proxy, at a meeting duly called for that purpose.

Section 5. Uniform Rate of Assessment

Annual assessments shall be fixed by the Directors at a uniform rate for each lot within the following two (2) categories: Category A: Commercial lots Category B: Residential Single Family

Section 6. Date of Commencement of Annual Assessments: Due Dates

Except as herein provided, the annual and special assessments provided for herein shall be due on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessments against each lot at least thirty days in advance of the due date of each annual assessment, and at least ninety days in advance of a special assessment and reserve assessments. Written notice of the annual and special assessments shall be mailed or personally delivered to every member subject thereto, at their last known mailing address.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association

Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the owners obligated to pay the same or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the open space or by abandonment of their lot.

Upon delivery of the notice of assessment to the owner, the assessment shall be a lien upon the owner's lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty days after the recording of the notice of lien, the Association may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property. The Association is entitled to collect during an action for delinquent assessments any and all reasonable attorney fees and costs accrued prior to and in association with the collection of delinquent assessments.

Section 8. Sale or Transfer of a Lot

The sale, transfer or encumbrance of any lot shall not affect the assessment lien if recorded in the records of Gallatin County, Montana, or the personal liability of the owner responsible for the assessment. No sale or transfer to a third party with actual or constructive knowledge of an assessment shall relieve such new owner from the liability for any outstanding assessments, or from any assessments thereafter becoming due, or from the recorded lien thereof. A person or entity purchasing a lot shall be responsible for checking with the Association for any outstanding assessments against said lot before the closing upon the purchase.

Article V

Design Guidelines

The intent of these guidelines is to define a level of quality and consistency of building design which will be consistent with and maximize the quality of the overall project. The unique design style of the Architect, Developer, Building Contractor, Home Builder, and Owners for the site, landscape, and the buildings will be respected, and individual expression is encouraged, provided they are harmonious with the overall character set forth in the Design Review Guidelines.

All developments shall be built in conformance with the Design Guidelines, a separate document, adopted to govern the building of any and all structures in Village at Amsterdam. The Design Guidelines are incorporated by reference herein and are enforceable as if they are a part of the document.

The Design Review Committee is hereby created and shall carry out all duties bestowed upon it by these covenants and the Design Guidelines, and any amendments made thereto.

The procedures for application, consideration and approval of any building are set forth in the Design Guidelines.

No development shall commence without the signed approval of the Village at Amsterdam Design Review Committee. Each structure must be constructed in compliance with the Design Regulations stated herein (Article XI), including but not limited to, location, square footage requirements, and height; and in compliance of the Design Review Guidelines including but not limited to color, material choices and usage, and all requirements of the Design Review Guidelines.

All landscaping shall be installed within the first growing season following substantial completion of the residential and/or commercial development.

Article VI

Property Use and Required Covenants

Section 1. Hunting

No hunting of, shooting at or harassing of birds, animals or any wildlife will be permitted. Skunks, gophers, and rodents may be trapped; however, poison may not be used.

Section 2. Pets

No livestock, poultry or other animals, except dogs, cats, or small in-house pets and birds, are permitted on the properties. Excessive amounts of pets of any type are not allowed. Excessive pertains to numbers that become uncontrollable from within the interior confines of the structure on the property, thus becoming a nuisance to neighboring properties and thus decreasing the value of said property.

All dogs, cats and other pets shall be strictly controlled by their owners so as not to annoy or interfere with the use of the properties by the other owners and to prevent any interference or harassment of wild birds or animals in the subdivision or on surrounding or adjacent properties. Dogs and cats shall be kept on the owner's property and shall not be allowed to roam free.

Section 3. Artificial Feeding

The artificial feeding of all wildlife is prohibited.

Section 4. Animal Proof Containers

All garbage shall be stored in animal-proof containers. Foodstuffs, including garden, pet, and other sources shall not be stored out of doors or in non-animal proof containers.

Section 5. Acceptance of Wildlife Damage

Lot owners acknowledge that wildlife damage to landscaping will occur. Lot owners accept this risk and shall not file claims against adjacent lot owners, the Association, or any other governing body for such damages unless evidence of violation of these Covenants is proven.

Section 6. Open Space and Trail Maintenance

The Association shall be responsible for trail maintenance within Village at Amsterdam. The Association is also responsible for the weed control, mowing, care and maintenance of open spaces and all common area amenities within Village at Amsterdam. The Association may use the provision of Covenants for collecting funds to pay for such maintenance.

Section 7. Noxious Weeds

In order to comply with the Noxious Weed Management Plans of the Gallatin County Weed Control District and the Montana County Noxious Weed Control Act, the District requires that the following items be addressed in the Covenants of each subdivision within Gallatin County.

The POA is responsible for noxious weed control in all parks, open spaces, community areas, trails, and roadways within the subdivision. Each landowner is responsible for the subdivision roadway adjoining their property. The POA will also act as the contact point for any noxious weed complaints within the subdivision.

The control of noxious weeds by the POA on those areas for which the POA 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 (MCA 7-22-2101 through 7-22-2153) and the rules and regulations of the Gallatin County Weed Control District. The landowner shall be responsible for the control of the state and county declared noxious weeds on his or her own lot. Both unimproved and improved lots shall be managed for noxious weeds. In the event a landowner does not control the noxious weeds, after ten days notice from the POA, the POA may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the lot and such assessment may become a lien if not paid within 30 days of the mailing of such assessment. The POA is responsible for the control of state and county declared noxious weeds in the subdivision's parks, open spaces, community areas, trails, and roadways.

Section 8. Construction Codes

All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3 and National Fire Protection Codes.

Section 9. Road Maintenance

The Association shall be responsible for road maintenance and snow plowing on the roads within Village at Amsterdam. The Association may use the provision of Article III for collecting funds to pay for such road maintenance.

Section 10. Driveway Placement

All lots shall have only one driveway access. Each driveway access point must be at least fifty (50) feet from the nearest road intersection.

Section 11. Fencing

- Fences projecting beyond the primary façade of residences are prohibited. All fences must be constructed with the finished façade to the exterior of the lot being fenced.

Section 12. Exterior Lighting

All exterior building lights shall be reflected downward with full cut-off luminaries. There shall be zero-light spill outside of the property being illuminated. All light fixtures shall not supply light pollution thus detracting from night sky visibility.

Section 13. Storage of Equipment

No lot or adjacent street, roadway or alleyway shall be used for the storage of any inoperable vehicle, machinery or equipment. No lot shall be used for storage of any articles, vehicles, equipment or other personal property of any quantity in excess of the immediate needs and personal use of the owner of a lot or the occupants and guests thereof as the case may be, and shall not interfere with the use or enjoyment of neighboring lots.

Section 14. Commercial Equipment

No lot, adjacent street or roadway shall be used for the outside parking or storage of any commercial trucks, large commercial vehicles or other heavy equipment, except as may be necessary during reasonable periods of construction. Nothing herein shall prohibit the storage of such vehicles within the confines of a garage approved by the DRC.

Section 15. Recreational Equipment

All campers, trailers, motor homes, boats, and all other recreational shall only be parked on the owner's lot. In no event shall such equipment be parked on roads, nor shall any equipment be parked such that it is visible from the streets or adjacent lots for a period exceeding three (3) days in any 30 day period. Storage or location of such equipment and vehicles, in excess of the requirements of this section, shall occur in an enclosed garage or other screened area with such garage or screen having been pre-approved in writing by the committee for design review.

Section 16. Offense Activity

No noxious odors or offensive activity shall take place upon any portion of the above described property, nor shall anything be done thereon which may be, or may become, an annoyance to the neighborhood.

No firearms shall be discharged on the above-described property.

Any violation of county ordinances or other regulations shall be a violation of these Covenants and can be enforced by the Association or individual lot owners.

Section 17. Ditches and Water Courses

Each owner of property within Village at Amsterdam acknowledges the presence of water features located in open spaces of the development. Each owner of property with Village at Amsterdam, as individuals and as members of the Association, acknowledges that water could pose a danger to humans, animal life and property. By this acknowledgement, each owner of property within Village at Amsterdam, as individuals and as members of the Association, assumes the normal and ordinary consequences of their actions when in, next to, or in the vicinity of water features within Village at Amsterdam.

Article VII

Emergency Services

Village at Amsterdam will be under the jurisdiction of Amsterdam Volunteer Fire Department. Ambulance service will be provided by AMR (American Medical Response).

Article VIII

Open Spaces

Section 1. Purpose

Open space within the development is proposed for active and passive activities and is to be accessible for public use. Trails and areas within Village at Amsterdam will serve as public recreation areas. The trail system shall be used for non-motorized travel only.

Section 2. Mandatory Requirements

Open spaces as designated on the Final Plat, shall be preserved in perpetuity. The Board, among its other duties, shall establish assessments for the taxes, insurance, and maintenance of all open space, roads, trails, and easements under the control and authority of the Association, owners' parks, and parkways.

The Association shall be responsible for liability insurance, local taxes and maintenance of recreation and other facilities in designated open spaces. The assessments levied by the Board for the maintenance, upkeep, repair and operation of open space like all other assessments, become a lien on each lot within Village at Amsterdam. The Board, may in its discretion, adjust the assessments to meet the changing needs of the community and the areas serving the community.

Section 3. Nuisance

No Owner, guest or invitee may use or occupy the open space, trails, roads, or any lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other owner, or guest of Village at Amsterdam. Violations shall be enforced as provided for in Article X of these Covenants.

Section 4. Control and Management

The Association shall have the exclusive right and obligation to manage, control and maintain the Open Space.

Article IX

Utilities Installation and Maintenance

Utilities Easement

Utility easements for electricity, gas, sewer, communications, telephone, water, television, cable communications, and other equipment shall be underground and are designated on the Village at Amsterdam Plat. All owners shall have the right to enter upon and excavate in such easements upon the approval of the DRC. Easements for ingress and egress and for utilities shall not be moved, deleted or restricted without the written approval of all the lot owners affected. Utility companies and owners must restore disturbed land to a condition as close as possible to the natural condition of the land before work commenced.

Utilities Installation and Maintenance

Village at Amsterdam, or its designated representative, shall cause the installation and maintenance of electric power, gas, cable, and telephone utility service to the junction of the main access road and home lot driveways. Owners shall bear all responsibility and costs from such junction to home lots. Owners shall bear the responsibility and maintenance costs associated with interior lot utilities, in cooperation with the utility provider.

All utilities of every nature shall be installed and maintained underground. Piping and wiring shall be concealed. Each owner shall be responsible for utility installation and maintenance in accordance with state and local regulations.

Water and Sewage

All improvements or structures designed for occupancy or use by humans shall be connected with individual wells for domestic water provided by the POA. All lot owners shall hook up to the sewer main and connect to the Water and Sewer District for sewer service.

Article X

Term, Enforcement, Applicability, and Change Enforcement

Section 1. The owner of each Lot shall be primarily liable, and the Occupant, if any, secondarily liable for the violation or breach of any covenant, condition or restriction herein contained. Violation or breach of any covenant, condition or restriction herein contained shall give to Declarant, or the Association, following thirty (30) days written notice to the Owner or Occupant in question except in extenuating circumstances, the right, privilege and license to enter upon the Lot where said violation or breach exists and to abate and remove summarily, or abate or remove, at the expense of the Owner or Occupant thereof, any improvement, structure, thing, or condition that may be or exist there on contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these Covenants to enjoin or prevent them from doing so, to cause said violation.

No such entry by Declarant, the Association or their agents shall be deemed a trespass, and neither Declarant nor the Association nor their agents shall be subject to liability to the Owner or Occupant of said Lot for such entry and any action taken to remedy or remove a violation. The cost of any abatement, remedy or removal hereunder shall be a binding personal obligation on any Owner or Occupant in violation of any provision of this Declaration, as well as a lien (enforceable in the same manner as a trust indenture) upon the Lot in question. The lien provided for in this section shall not be valid as against a bona fide purchaser or mortgagee for value of the Lot in question unless a suit to enforce said lien shall have been filed in a court of record in Gallatin County, Montana, prior to the recordation of the deed or mortgage conveying or encumbering the Lot in question to such purchase or mortgage, respectively.

Section 2. Right of Entry. During reasonable hours and upon reasonable notice (24 hours), and subject to reasonable security requirements, the Declarant, the Association or their agents, shall have the right to enter upon and inspect any Lot and the Improvements thereon covered by this Declaration for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and neither Declarant nor the Association nor their agents shall be deemed to have committed a trespass or wrongful act by reason of such entry or inspection.

Section 3. The term of the provisions of these Covenants shall be binding for a term of fifteen (15) years from the date of these Covenants and may be modified, altered or amended during that period only by the Declarant at the Declarant's sole option. After the initial fifteen (15) year period, the Covenants should be automatically extended for successive periods of ten (10) years not to exceed three (3) such extensions unless an instrument agreeing to amend, revoke or terminate these Covenants has been signed by the Owners of eighty (80) percent of the lots in Village at Amsterdam. Any covenant required as a condition of preliminary subdivision approval shall not be altered or amended without the agreement of the governing body.

Section 4. Enforcement of these Covenants shall be by proceedings either at law or in equity against any person or persons violating, or attempting to violate, any Covenant; and the legal proceedings may either be to restrain violation of these Covenants, to recover damages, or both. Should any lawsuit or other legal proceeding be instituted by the Association or an owner against an owner alleged to have violated one or more of the provisions of these Covenants and should the Association or owner enforcing the provisions of the covenants be wholly or partially successful in such proceedings, the offending owner shall be obligated to pay the costs of such proceeding, including reasonable attorney's fees for all time associated with the action.

Section 5. The failure of the Declarant, the Association or an owner, to enforce any Covenant or restriction contained herein shall not be deemed a waiver or in any way prejudice the rights to later enforce that Covenant or any other Covenant thereafter, or to collect damages for any subsequent breach of Covenants.

The waiver or approval of a variance of a Covenant provision by the Board of Directors, or non-action of the Association or Declarant in the event of a violation of a Covenant by a particular owner or lot, shall not be deemed to delete or waive the Covenant or enforcement thereof as it pertains to other Owners or lots.

Section 6. Invalidation of any one of these Covenants by judgment or by Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

Section 7. In any conveyance of the above described real property or of any lot thereon, it shall be sufficient to insert a provision in any deed or conveyance to the effect that the property is subject to protective or restrictive Covenants without setting forth such restrictions and Covenants verbatim or in substance in said deed nor referring to the recording data. All of the above described real property and lots shall be subject to the Covenants set forth herein, whether or not there is a specific reference to the same in a deed or conveyance.

Section 8. A breach of any of the foregoing restrictions or Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any lot or portion of the real property or any improvements thereon. However, the Covenants shall be binding upon and shall insure to the benefit of any subsequent owner whose title thereto was acquired by foreclosure, trustee sale or otherwise.

Section 9. After the initial 15 year term for these covenants, the provisions of these Covenants may be changed or amended or additional Covenants added, in whole or in part, by the Association upon approval of two-thirds (2/3) of the votes of the Property Owners' Association at a meeting duly noticed and called for this purpose; provided that, the easements for roads, utilities and common areas shall not be changed without the unanimous consent of all of the Owners affected by the change.

The President or Vice-President shall execute and record the amendment, change or addition with the Clerk and Recorder of Gallatin County, Montana.

Any change of these Covenants shall be effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. Any change in these Covenants shall not affect existing structures and uses of the lots.

Section 10. After the initial fifteen (15) year term for these covenants, the provisions of these Covenants may be changed or amended or additional Covenants added, in whole or in part, by the Association upon approval of two-thirds (2/3) of the votes of the Property Owners' Association at a meeting duly noticed and called for this purpose; provided that, the easements for roads, utilities and common areas shall not be changed without the unanimous consent of all of the owners affected by the change.

The President or Vice-President shall execute and record the amendment, change or addition with the Clerk and Recorder of Gallatin County, Montana.

Any change of these Covenants shall not be made without prior written consent of the Gallatin County Commissioners. Approved changes shall become effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. Any change in these Covenants shall not affect existing structures and uses of the lots.

Article XI

Village at Amsterdam Design Review Committee (DRC)

Section 1. Authority

The Village at Amsterdam Design Review Committee (DRC) shall act in addition to, and not in lieu of, the Gallatin County Planning Board & Gallatin County Zoning Commission. The Gallatin County Planning Board and Zoning Commission are not however, appeal boards for the DRC. The DRC is given authority through Article VI of the Declaration of Codes, Covenants and Restrictions for Village at Amsterdam.

Section 2. Committee Organization

The committee is established by the POA who is responsible for appointing members and terms. The DRC shall then consist of three members appointed by the POA.

The DRC shall modify when necessary, and enforce the Design Guidelines related to the external design, appearance, and location of all specified properties and improvements within Village at Amsterdam.

Section 3. Purpose

The Village at Amsterdam DRC is established and given the authority to coordinate, expedite and assure fair implementation of the Covenants and Design Guidelines. The objective of this committee is to encourage development quality that will enhance both the natural and built environments.

Section 4. Duties

The Village at Amsterdam DRC is responsible for administering the Covenants and Design Guidelines and performing the following duties:

1. To form such reasonable rules and by-laws and adopt such procedures as it deems necessary to carry out its functions.
2. To review all of the following it deems necessary:
 - 2.1. Site plans
 - 2.2. Landscape plans
 - 2.3. Building plans, elevations, and associated drawings
 - 2.4. Material and color samples
 - 2.5. Other information deemed appropriate to individual proposals
3. To require in writing, all improvements, such as the following, to be reviewed and approved by the DRC before construction commences.
 - 3.1. Construction of buildings, auxiliary structures or roads
 - 3.2. Alterations and Remodeling
 - 3.3. Restorations

- 3.4. Landscaping, Fences, and Walls
- 3.5. Private Parking and Driveways
- 3.6. Signs and Exterior Lighting
- 3.7. Other Improvements specific to an individual proposal

- 4. To enforce height requirements contained within the Covenants and Design Guidelines and to designate such requirements where they are not called out.
- 5. To reject materials, designs and colors submitted with the plans and the plans themselves, if they are not compatible with or are inappropriate to the overall vision of the subdivision or are non-conforming to the Design Guidelines.
- 6. To grant variances to the Covenants and Design Guidelines as it deems appropriate.
- 7. To interpret Covenants and Design Guidelines as is deems appropriate and make rulings thereon.
- 8. To insist upon the completion of all improvements in substantial compliance with the approved plans and specifications.
- 9. To enforce the Covenants and Design Guidelines in a court of law.
- 10. To revoke or suspend approvals and order the suspension or cessation of any construction in violation of the Covenants and Design Guidelines or any approval issued by the DRC.
- 11. **To require that a fee of \$300.00 be paid for the review and approval of building plans and specifications.**
- 12. To require the submission of landscape plans with all requests for review and approval of building plans.

Section 5. Liability

Neither the DRC nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of the following:

- The approval of any plans, drawings or specifications, whether or not defective.
- The construction or performance of any work, whether or not pursuant to approved plans, drawings, or specifications.
- The development or manner of development of any property within Village at Amsterdam provided, however, that such member has acted in good faith.

Article XII

Zoning Regulations and Codes

1. General Information

Village at Amsterdam is located within the jurisdictional area of Gallatin County. Village at Amsterdam shall be consistent with the ordinances of Gallatin County, and the Design Guidelines stated herein. In addition to these Design Guidelines, building design will be regulated by City, County, State, and Federal

regulatory agencies having jurisdiction. The Owner or his or her agent shall be responsible to ensure conformance with the most recently adopted jurisdictional regulations.

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 enclosures, wells or 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.

2. General Development Parameters

a. **Density** – Not more than one single family residence may be built on each single family residential lot.

b. **Allowable Uses – Commercial**

The intent of the commercial district is to provide goods and services primarily to the residents and the guests of Churchill, Amsterdam, Village at Amsterdam and surrounding areas.

c. **Disallowed uses:**

- -Light manufacturing
- -Automobile service centers
- -Adult novelty/bookstores
- -Pawn shops

d. **Building Envelope**

Each building lot in Village at Amsterdam shall have a building envelope surveyed and located on site established by the Design Guideline setbacks. All dwellings, exterior parking spaces, garages, sheds, carports, porches, and decks shall be contained within the building envelope. Swimming pools are not permitted as they breach guidelines concerning fence height requirements and sustainability concerns arise.

e. **Setbacks within the Building Envelope**

a. Single family Residential setbacks

- 10' side yard
- 25' foot front yard
- 20' foot rear yard

b. Commercial Setbacks

- 5' foot front yard
- 10' foot side yard
- 10' foot rear yard

c. Areas of active use and noise shall be buffered from adjacent properties.

- d. Additional setbacks from tree masses, native vegetation transition zones, topography, drainage, view corridors, roads, paths, and utility easements shall be enforced by the DRC.
- e. Any building envelope overlapping with front, rear or side yard setbacks shall be restricted by the required setbacks.

f. Maximum building Footprints and Minimum Floor Areas

- Each single-family residence in Rivera Ranch shall comply with the following:
 - Single-Family Residences – One-Story
 - Maximum built footprint regarding impervious surface including all exterior structures, paving, decks, etc: 35% of lot square footage
- Minimum floor area (excluding exterior parking spaces, garages, carports, porches, and decks):
 - 1,500 square feet on main level
 - Ground level, walk-out portions of basements shall be included in minimum floor area calculations.
- Single-Family Residences – Two-Story
 - Maximum built footprint regarding impervious surface including all exterior structures, paving, decks, etc: 35% of lot square footage
- Minimum floor area (excluding exterior parking spaces, garages, carports, porches, and decks):
 - 1,300 square feet on main level
 - 1,850 square feet all levels combined
- Ground level, walk-out portions of basements shall be included in minimum floor area calculations.

g. Applicable Codes

- Village at Amsterdam Design Guidelines
- Village at Amsterdam Covenants, Codes and Restrictions
- Uniform Business Code (UBC)
- National Electric Code
- Uniform Mechanical Code
- Uniform Fire Code
- National Fire Protection Association Code
- State Fire Code Standards
- Montana Energy Code
- All other applicable County, State and Federal Regulations

Article XII1

Construction Procedures

A. Approvals Required Prior to Construction Commencement

a. Permits

Construction shall not commence until Final Plan Approval has been received from the DRC and a building permit has been issued by appropriate agencies. Building construction must strictly conform to the approved Final Plan and must be completed within eighteen (18) months after obtaining the building permit unless specific written extension is granted by the DRC.

No accessory structure, buildings, garages, or sheds shall be constructed on any lot prior to the construction of the main structure of the residence provided however, that the provisions of this sub-paragraph shall not apply to temporary construction shelters which may be constructed for use after the issuance of the residence's building permit.

b. Approvals

All modifications to previously approved site, landscape and architectural plans must be submitted and approved by the DRC.

B. Construction Regulations

a. Noise Abatement and Hours of Work

Heavy equipment operation and other loud noise from construction are prohibited between 7:30 p.m. and 6:30 a.m. No shall occur.

b. Construction Staging and Material Storage

All construction staging, including but not limited to, daily vehicular movement and parking, material storage, equipment storage, construction trailers, etc., must take place within the lot for which the building permit was issued unless an alternate staging area is approved in writing by the POA.

c. Trash Containment and Removal

Trash and construction debris shall be kept in containers, and be emptied on a regular basis to insure sufficient room to store trash at the end of each working day. It shall be the responsibility of the general contractor to remove and dispose of, at an authorized county land fill, any excess trash and construction debris.

Burning of debris is controlled by Gallatin County.

d. Tree and Property Protection

Construction practices must include care during grading and excavation to avoid damage to existing trees, shrubs and their root structures.

All construction equipment and activity including vehicular movement, unloading or daily parking, as well as stockpiling of materials and topsoil must be kept within the perimeter of the lot unless written authorization is received from the DRC. Any adjacent property, including roads or common areas damaged during construction, shall be promptly restored or re-vegetated to the satisfaction of the DRC. If such restoration is not completed promptly, the DRC will contract for the repairs with all costs charged to the person in whose name the Final Plan approval was issued.

e. Pet control

Any contractor and or subcontractor shall maintain complete control of any pets brought onto a jobsite. Such control shall include not allowing said animals to roam free outside of the jobsite onto adjacent properties.

f. Temporary structures.

A small job office or trailer may be located on the site during the construction period. The job office must be removed from the site prior to occupancy.

g. Erosion Control

All disturbed areas of the site shall be protected from erosion during and after the construction period. Erosion control measures must be taken during construction to insure soil stabilization, sediment control and timely re-vegetation.

C. Building Inspections

The DRC will not inspect projects for building code conformance. The DRC will however, from time to time review the construction sites for conformance to the design standards.

It is the responsibility of the Applicant or the Applicant's builder to contact the state and other authorities regarding electrical, plumbing and other required inspections for building code conformance.

The DRC will inspect or appoint a qualified inspector to verify that all sustainability requirements are met.

Article XIV

Waiver

Neither Declarant or the Association nor their successors or assigns shall be liable to any Owner or Occupant of the Property by reason of any mistake in judgment, negligence, nonfeasance, action or inaction for the enforcement or failure to enforce any provision of this Declaration. Every Owner or Occupant of any said property, by acquiring its interest therein, agrees that it will not bring any action suit against the Declarant and/or the Association to recover any such damages or to seek equitable relief because of the same.

Article XV

Amendment

These covenants shall remain in effect until amended or terminated. The Covenants, or any portion thereof, may be amended, terminated, or supplemented at any time by the execution of a written document containing the terms of the amendment, supplement or termination of any of the Covenants, duly acknowledged by a Notary Public, and recorded with the office of the Gallatin County Clerk and Recorder, executed by at least seventy-five percent (75%) of the owners of the property based on one vote per lot. If there is more than one owner for a lot, each owner must execute the amendment, supplement or termination document to count for one vote towards the seventy-five (75%) total.

Article XVI

Severability

Captions and paragraph headings are designated herein as a matter of convenience. A determination of invalidity of any portion of these covenants shall not in any manner affect the other portions or provisions.

Article XVII

Design Review Process

The design review process must be followed for any of the following:

- Construction of any building
- Renovation, expansion, or refinishing of the exterior of any building
- Interior changes which affect the major function of a building
- Major landscape, road or parking changes
- Exterior lighting changes

In addition to meeting the requirements of this manual, an owner must comply with the requirements of all governing agencies including Gallatin County and the State of Montana in order to obtain a building permit, Certificate of Occupancy, Temporary Certificate of Occupancy or similar occupancy approval.

All architectural and building plans submitted to the DRC shall be of an architectural quality prepared by a licensed architect. All site, landscape and irrigation plans shall be submitted by a landscape architect or

landscape designer. The DRC shall reject materials, designs and colors submitted with the plans, and the plans themselves, if they are not compatible or are inappropriate with the Master Plan of the Subdivision.

The Village at Amsterdam Design Review Process has two steps: Initial Plan Review and Final Plan Approval. It is recommended that owners follow this two step process for any major building project. However, owners may submit materials for Final Plan Review and Approval without an Initial Plan Review. In addition, the owner may appeal the DRC's decision to the Village at Amsterdam Property Owner's Association.

A. Initial Plan Review.

The Initial Plan Review addresses the conceptual design of the project. The review will address existing site conditions and planned improvements, building floor plans and elevations, roof design, architectural character or expression, exterior materials, grading, drainage, and erosion control measures. Reference Initial Plan Review Checklists and Evaluation Criteria for complete submission requirements.

The Initial Plan Review includes the following steps:

1. Owner/Architect prepares and submits to the DRC two copies of the Initial Plan, which includes all information required by the Initial Plan Review Checklist.
2. DRC reviews Initial Plan at scheduled meeting and notifies owner in writing of the findings within seven (7) working days.
3. If necessary, the Owner may resubmit an Initial Plan or appeal to the POA within 30 working days.

B. Final Plan Review and Approval

The Final Plan Review and Approval addresses the final design details of the project. The review will address planned improvements, building elevations, building sections, roof design, architectural character or expression, exterior materials, site conditions, grading, drainage and erosion control measures. Final Plan Review Checklist and Evaluation Criteria for complete submission requirements.

The Final Plan Review and Approval includes the following steps:

1. Upon approval of the Initial Plan the owner/architect shall prepare and submit two copies of the final plan which shall include all information required by the Final Plan Review Checklist
2. DRC will notify owner in writing of the Final Plan Approval decision within ten (10) ng days.
3. Upon issuance of written approval, owner may apply for a building permit and design approval from the governing authorities.

Chapter XIII of the Design Guidelines document contains the Checklist Forms, listing the required steps and submittals needed for both the Initial Plan Review and the Final Plan Review. To make sure that the Lot Owner, the Owner's Architect, Builder, or their representative files a complete Submittal Package with the DRC at each stage of the review, it is recommended that these forms be used during the compilation of needed materials prior to scheduling a review by the DRC.