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09/11/2014 10:35 AM Pages: 1 of 18 Fees: 125.00
Jeff Martin Clerk & Recorder, Yellowstone MT



Return to: Kadrmas, Lee & Jackson, Inc.
P.O. Box 80303
Billings, MT 59108-0303
Attn: Anne

Minor Modification of PLANNED DEVELOPMENT AGREEMENT

FOR

MONT VISTA

By and Between:

Mont Vista, LLC
2116 Broadwater Avenue, Suite 101
Billings, Montana 59102

And

The City of Billings, Montana



**CONSENT TO MINOR MODIFICATION OF
PLANNED DEVELOPMENT AGREEMENT
FOR MONT VISTA SUBDIVISION**

In accordance with the Unified Zoning Code Section 27-1310, the parties to the Planned Development Agreement for Mont Vista ("Agreement") recorded on August 5, 2009 as Document No. 3519086 and relating to the following property:

Certificate of Survey No. 2054 as shown on the plat and survey thereof on file and of record in the office of the Clerk and Recorder, Yellowstone County as Document No. 1191101.

desire to make a minor modification to the Agreement by substituting the attached document in its entirety for the original document filed. The parties to the Agreement consent to this modification, said parties being the CITY OF BILLINGS, a Montana municipality ("the City"), of 210 N 27th Street, Billings, Montana, 59101 and MONT VISTA, LLC, a Montana limited liability corporation, of 2116 Broadwater Avenue, Suite 101, Billings, Montana 59102.

IN AGREEMENT WITH THE FOREGOING, the authorized representatives of the foregoing parties have executed this document on the date or dates appearing below. The parties agree that this document may be signed in counterparts using separate signature pages.



This **MINOR MODIFICATION TO THE PLANNED DEVELOPMENT AGREEMENT FOR MONT VISTA** is made this ____ day of _____, 20__, by Mont Vista, LLC, a Montana limited liability company ("Developer") of 2116 Broadwater Avenue, Suite 101, Billings, MT 59102 and the City of Billings, a Montana municipality, ("City") of 210 North 27th Street, Billings, MT 59101.

RECITALS

WHEREAS, MONT VISTA, LLC is the owner of all of the following described property situated in the N1/2NW1/4 of Section 32, Township 1 North, Range 25 East, P.M.M., Yellowstone County, Montana:

Certificate of Survey No. 2054 as shown on the plat and survey thereof on file and of record in the office of the Clerk and Recorder, Yellowstone County, Montana; and

Cynthia Park parcel and abutting Cynthia Park Drive right-of-way as established by the Yerger Heights Subdivision plat.

WHEREAS, a portion of the above described property is referred to herein as "Mont Vista Planned Development"; and

WHEREAS, the Mont Vista Planned Development may consist of a mixture of residential housing and Mont Vista, LLC desires to place certain Planned Development zoning and land use restrictions on the property; and

WHEREAS, Mont Vista, LLC enters into this Agreement with the City of Billings to ensure that the Mont Vista Planned Development will be developed and maintained consistent with the standards described in this Agreement.

NOW, THEREFORE, the undersigned hereby establish and declare the following development plan shall apply to all of the real estate described hereinabove, shall bind the present and future property owners to such real property and shall run with the land.

AGREEMENT

ARTICLE I - PURPOSES

Section 1. Greater or Lesser Standards. Many of the requirements described in this Agreement are the same, similar to, or stricter than requirements in the Unified Zoning Regulations. However, to the extent that this Agreement creates greater or lesser standards for density, use, height, lot coverage, parking, signage, traffic circulation, landscaping or other land use conditions, the City has determined in accordance with Section 27-1303 of the Unified Zoning Regulations, these unique standards are appropriately balanced by the inclusion of mitigating features or special amenities not otherwise provide by law or regulation. Some of these amenities that shall be incorporated into the Mont Vista Planned Development include:

- A. Open Space and Park Land above the statutory minimum of eleven percent (11%).
- B. The Development will provide access to a natural bird habitat to be dedicated as Park Land. This Park Land bird habitat area will emphasize a natural park concept.



C. Construction and landscaping of a functional and attractive pedestrian and bicycle facility that will promote the safe and convenient transportation of children and adults while interfacing with the Cottonwood Park located off the southwest corner of the Mont Vista Planned Development.

D. Construction of a functional and attractive pedestrian path interconnecting Park Land to facilitate pedestrian walking in a natural and linear Park Land concept.

Section 2. Natural Environment. A natural and healthy environment will be emphasized with ample Park Land and Open Space. Sidewalks, bicycle and walking trails will interconnect with Park Land to encourage physical activity.

Section 3. Mixed Residential Use Purpose. The Mont Vista Planned Development will effectively define a variety of residential uses allowing for a planned mix of housing types creating a diverse and aesthetically pleasing community.

Section 4. Flexibility for Future Development. The Mont Vista Planned Development shall permit maximum flexibility of design and materials to meet residential demands as they change over time. The planned development zoning described in this Agreement is intended to provide an opportunity for future development that will create an attractive and functional neighborhood with a variety of living opportunities.

ARTICLE II – DEFINITIONS

Section 1. Unified Zoning Regulation Definitions. All terms used herein shall have the same definition and meaning as specified in the City of Billings Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein. If a definition is not provided, the term shall be deemed to have a common and ordinary meaning.

Section 2. Mont Vista Planned Development. “Mont Vista Planned Development” or “Planned Development” or “development” consists of a portion of the land situated in the N1/2NW1/4 of Section 32, Township 1 North, Range 25 East, P.M.M., Yellowstone County, Montana described in Certificate of Survey No. 2054 as shown on the plat and survey thereof on file and of record in the office of the Clerk and Recorder, Yellowstone County, Montana. Certificate of Survey No. 2054 land is planned to be in the Mont Vista Subdivision plat including residential lots, streets, Open Space and Park Land within in the Mont Vista Planned Development. Existing R-96 zoning in the northwest corner of the Mont Vista Subdivision is not included in the Planned Development. Attached hereto and by reference incorporated herein is the attached **Planned Development Exhibit** illustrating the land and streets included in the Planned Development. The development will feature mixed residential uses.

Section 3. Mont Vista Homeowners Association. The term “Association” or “Mont Vista Homeowners Association” shall mean the association of owners of property within the Mont Vista Planned Development that may be organized by Mont Vista, LLC.

Section 4. Design Review Committee. “Design Review Committee” means the person, entity or committee appointed by Mont Vista, LLC to exercise the rights, duties and responsibilities assigned to it by Mont Vista, LLC under this Planned Development Agreement or under any Declaration of Covenants and Restrictions recorded by Mont Vista, LLC.



Section 5. Developer. "Developer" means Mont Vista, LLC or any person or entity to whom Mont Vista, LLC transfers or assigns its development rights hereunder.

Section 6. Dwelling Unit. "Dwelling Unit" means one (1) or more rooms designed for or occupied by one (1) family for living or sleeping purposes and may contain kitchen and/or bathroom facilities for use solely by one (1) family. All rooms comprising a dwelling unit shall have access through an interior door to other parts of the dwelling unit. A residence building may contain one (1) or more dwelling units.

Section 7. Grade. "Grade" is the lowest point of elevation of the finished surface of the ground, or the lowest point of elevation of the finished surface of the ground between the exterior wall of the building and the property line, if it is less than five (5) feet distance from the wall. In cases where walls are parallel to and within five (5) feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley, or public way.

Section 8. Height. "Height" or "Building Height" means the vertical distance from the highest point of a structure to the "grade".

Section 9. Lot. "Lot" or "lot" means a portion of the Mont Vista Planned Development depicted as a separately identified parcel on a recorded subdivision plat that may be independently owned and conveyed. The term refers to the land, as opposed to any structures or other improvements on the Lot. Multiple Dwelling Units may be located on one Lot. The term does not include Park Land and Open Space or property dedicated to the public.

Section 10. Public Park Land, Private Park Land and Open Space. "Public Park Land", "Private Park Land" and "Open Space" means any property or facility that Mont Vista, LLC has identified on the Mont Vista Subdivision plat as "Public Park Land", "Private Park Land" and "Open Space". In addition, Park Land may include but is not limited to park areas, open spaces, common areas, water amenities, bike trails, walking paths, exercise or play areas, sitting areas, picnic areas, , community sign areas.

Section 11. Owner. "Owner" or "owner" shall mean any person or entity owning a fee simple interest in a lot or a purchaser by a contract, whether one or more persons or entities, owning or purchasing a lot, but excluding Developer and/or those having a mortgage or an interest merely as security for the performance of an obligation.

Section 12. Patio Home. A single family dwelling unit with common ownership of land which may include an attached patio.

Section 13. Single Family. "Single Family" or "single family residential" means a building constructed and designed for occupancy by one (1) family and containing one (1) dwelling unit.

Section 14. Story. "Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused under-floor space is more than six (6) feet above grade as defined herein for more than fifty percent (50%) of the total perimeter or is more than twelve (12) feet above grade as defined herein at any point, such basement, cellar or underused under-floor space shall be considered a story.

Section 15. Town Home. "Town Home" or "town home residential" or "townhouse" means a building or structure that has two (2) or more one (1) family dwelling units erected as a single



building, each being separated from the adjoining unit or units by an approved fire wall or walls and providing for fee simple ownership of land and dwelling unit. In contrast to a "condominium" a town home includes deeded ownership of the land underneath the dwelling unit in the town home, whereas a condominium may not.

Section 16. Twin Home. Twin Home" or "twin home" or "twin home residential" means a building constructed and designed for occupancy by two (2) families living independently of each other, and containing two (2) dwelling units, where the dwelling units share a common separation such as a hallway, covered lane, ceiling, wall, including without limitation, the wall of an attached garage or porch, however access can be gained between the units through an internal doorway and/or common hallways and/or covered lane.

Section 17. Unit Ownership Act. Unit Ownership Act means the Unit Ownership Act of the State of Montana, Section 70-23-101, et seq., Montana Code Annotated. At the discretion of Developer(s), the Unit Ownership Act may be used to develop Patio Homes, Town Homes, and Twin Homes in the Areas identified herein for such use. However, the terms and limitations in this Planned Development Agreement shall remain applicable.

ARTICLE III – PERSONS BOUND BY THIS AGREEMENT

Section 1. Persons and Entities Bound. The City of Billings and all individuals, corporations or other entities who presently have or shall hereafter acquire any interest in and to any of the real property within the Mont Vista Planned Development shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement, the terms of which shall run with the land.

ARTICLE IV – LAND USES

Section 1. Underlying Land Use Classifications. Lots and underlying land use classifications are illustrated on the attached **Planned Development Exhibit**. The lots are divided into the following Areas with described underlying land use classification.

Underlying Land Use Classification(s)

AREA NO. 1	R-96	Residential 9,600
AREA NO. 2	R-70	Residential 7,000
AREA NO. 3	R-70R	Residential 7,000 Restricted
AREA NO. 4	R-60	Residential 6,000
AREA NO. 5	RMF-R	Residential Multi-Family-Restricted
AREA NO. 6	RMF	Residential Multi-Family

Section 2. Permitted Area Uses.

- Area No. 1 lots may be used for single family residential purposes.
- Area No. 2 lots may be used for single family and/or twin home residential purposes.
- Area No. 3 lots may be used for single family residential purposes.
- Area No. 4 lots may be used for single family residential purposes.
- Area No. 5 lots may be used for single family and/or patio home residential purposes.



Area No. 6 lots may be used for single family and/or town home residential purposes.

Land not described in lots is to be used for Open Space, Park Land, streets, boulevards, trails, sidewalks, drainage ponds, Cove Ditch, irrigation ditches and structures, ingress and egress and utility easements and such other uses as may be reserved or required by Developer. Developer, at its discretion, may transfer Open Space land to a Mont Vista Homeowners Association company.

Section 3. Special Review Uses. Special Review Procedures for the underlying land use classifications set forth in Article IV hereinabove are allowed and shall comply with the Unified Zoning Regulations as established by the City of Billings.

Section 4. Special Review Criteria to be Considered. In considering a special review request, in addition to the review criteria in the Unified Zoning Regulations, the City shall consider the following criteria:

- A. Mont Vista, LLC must have given its written consent to the special review request.
- B. The proposed use meets architectural guidelines as may be established by Mont Vista, LLC.
- C. In no case shall a variance be granted for a use prohibited by this Agreement.

Section 5. Commercial Uses Prohibited. All lots within the Mont Vista Planned Development shall only be used for residential purposes which include lots used for storm drain ponds. No lot may be used at any time for any business, trade, manufacture or other commercial purpose; however, dwelling units may be rented and in home business using telephone, internet and other telecommunications is allowed but such in home business shall be regulated as may be required by City zoning regulations or municipal code.

Section 6. Accessory Dwelling Units. Excluding Twin Homes, guesthouses detached from a dwelling unit and/or rental apartments above a garage are not allowed.

Section 7. Overhead Lines. Overhead utility lines including electrical, telephone, cable lines are prohibited.

Section 8. Lot Size. The lot sizes are varied and will be set forth in the final plat of the Mont Vista Subdivision. No lot area per dwelling unit, however see Maximum Density as shown below.

Section 9. Minimum Setbacks.

Minimum Setback Requirements for lots in all Areas is as follows:

Front----- 20 feet

Side ----- 5 feet *

Side adjacent to Street-----10 feet

Rear of Lot abutting Cove Ditch 66 feet easement----- 5 feet

Rear of Lot not abutting Cove Ditch 66 feet easement-----10 feet

* Side setbacks do not apply to twin homes or town homes sharing a common wall.



Section 10. Lot Coverage. With setback and height limitations, lot coverage maximums allow larger building footprints. Maximum lot coverage is 65%.

Section 11. Maximum Height. Maximum Height for all buildings is 36 feet with a limit of two stories in addition to basements.

Section 12. Permitted Projections. With Design Review Committee approval, the following projections shall be permitted:

- A. Front porches, steps, balconies, stoops, open porches, and covered walkways may encroach 5 feet into a 20 feet front yard setback; however, an encroaching porch must have a length equal to or greater than forty percent (40%) of the length of the building facade or 12 feet, whichever is greater and a minimum depth of 6 feet.
- B. Fireplaces and bay windows not to exceed two (2) feet;
- C. Roof overhangs, eaves, gutters, cornices or other architectural features not to exceed three (3) feet.

Section 13. Maximum Density. The City calculates density by determining total dwelling units divided by total gross acres. The City recommends a minimum density of 4 units per acre. Maximum average dwelling unit density for 293 dwelling units divided by 60.696 gross acres (64.986 acres in COS No. 2054 minus 4.29 acres in the northwest corner of the property shown as Block 4 in the attached Exhibit) is an average density of 4.83.

The dwelling units are located in Areas shown on the attached **Planned Development Exhibit** as follows:

Area No. 1	9 Single family dwelling units
Area No. 2	42 Single family and/or twin home dwelling units
Area No. 3	41 Single family dwelling units
Area No. 4	72 Single family dwelling units
Area No. 5	36 Single family and/or patio home dwelling units
<u>Area No. 6</u>	<u>93 Single family and/or town home dwelling units</u>
Total	293 dwelling units

Nothing herein shall require Developer(s) to actually build the maximum 293 dwelling units.

ARTICLE V – BUILDINGS, SIGNS, FENCES DESIGN STANDARDS

Section 1. General Building Design Standards. Unless expressly designated herein, the building design standards of the City of Billings Zoning Regulations, the Site Development Ordinance and the Building Code shall be followed for properties in this Planned Development.

Section 2. Design Considerations. Design Considerations shall include five (5) of the following considerations in any application to the Design Review Committee and to the City:

- A. Relationships to open space, pedestrian circulation, landscape features on and adjacent to the site;

- B. Views of the architecture from pedestrian and vehicular perspectives;
- C. Satisfaction of physical, psychological, social and functional needs of users;
- D. Orientation of buildings in relation to streets;
- E. Vehicular versus pedestrian flows.
- F. Character of surrounding developments;
- G. Solar orientation, climate and solar reflection
- H. Potential environmental hazards;
- I. Enhancement of the overall landscape;
- J. Scale of adjacent facilities and open space;
- K. Mountain views.

Section 3. Design Features. Design features shall include three (3) of the following as features of the finished construction:

- A. Landscaped entrance drives;
- B. Decorative walkways;
- C. Dynamic building and roof forms;
- D. Window patterns;
- E. Light and shadow patterns;
- F. Color accent.

Section 4. New Construction Required. Any building or residence erected upon lots in any of the Areas shall be of new construction with concrete basements or concrete footings and foundation walls or other appropriately designed permanent foundation system.

Section 5. Construction Equipment Time Limit. No construction equipment or materials of any nature shall be moved on to a lot more than sixty (60) days prior to the start of construction to be initiated thereon.

Section 6. Additional and Supplemental Design Guidelines. In addition to the design rules set forth herein, Mont Vista, LLC may record a Declaration of Covenants and Restrictions that provides additions, amendments and supplemental design and restriction guidelines.

Section 7. Signs Comply with Zoning Regulations. All signs shall comply with the City of Billings Zoning Regulations unless limited herein or as provided in any restrictive covenants recorded by Mont Vista, LLC. No neon, florescent, or lighted signs are allowed.

Section 8. Fences Comply with Zoning Regulations. Fences, walls, berms, hedges and other improvements shall comply with the clear vision standards of the City of Billings Zoning Regulation. Rear and side yard fences, walls, berms or hedges on a lot and not on a street or Open Space or Park Land shall not exceed eight (8) feet. An earth berm or hill on Open Space or Park Land may exceed eight (8) feet.

VI – LANDSCAPING

Section 1. Park Land Landscaping. Developer, at its expense, shall landscape private Park Land as subdivision filings are developed. The Open Space within the Cove Ditch easement may remain natural and "as is" and need not be landscaped. Emphasis will be given to creating natural and linear park areas, preserving trees, using drought tolerant plant species.

Public Park Land dedicated to the City will be master planned and Developed by the City through implementation of a Special Improvement District (SID). Property owners within the Mont Vista Subdivision will be assessed the costs for development of the public parkland. This obligation occurs after sixty percent (60%) of the total Planned Development is sold (147 dwelling units). At the Developer's option, the master plan process may occur sooner to accommodate proposed stormwater management in the public park land. If the Developer elects this option, the Park Department shall manage the process and the Developer shall pay for the process up to a maximum amount of \$15,000.

Natural park land is not required to be irrigated but may be irrigated as is necessary to maintain plants and grasses.

VII – PARK LAND

Section 1. Park Land. The statutory park dedication requirement shall be satisfied by Mont Vista, LLC as outlined in the City of Billings Subdivision Regulations.

Section 2. Park Land Maintenance. The maintenance of Park Land dedicated to the public will be by a Park Maintenance District (PMD). Fees obtained from lot owners in the Mont Vista Subdivision will be used to maintain, repair and improve the Public Park Land. Maintenance of private Park Land and open space will be the responsibility of Mont Vista Homeowners Association.

Section 3. Cynthia Park Land Exchange. Cynthia Park as shown on the Yerger Heights Subdivision plat is owned by the City. Mont Vista, LLC and the City agree that Cynthia Park shall be exchanged for an equal acreage of land now owned by Mont Vista, LLC. The existing Cynthia Park land shall be transferred to Mont Vista, LLC and the Park Land depicted on the attached Planned Development Exhibit as exchange for Cynthia Park shall be transferred to the City with good, clear, insurable and merchantable title, and shall be dedicated as Public Park Land. The land acquired by Mont Vista, LLC which is presently Cynthia Park shall cease to be Public Park and shall be Planned Development (PD) zoned and available for development under the Mont Vista Planned Development. The land exchange procedure shall comply with Montana state statutes.

VIII – BICYCLE AND PEDESTRIAN FACILITIES

Section 1. Bicycle and Pedestrian Paths. The development shall provide for pedestrian access along or through lots, and Private Park Land to create a system of bicycle, pedestrian sidewalks and paths. Whether bicycle/pedestrian paths and trails are developed in Public Parkland will be determined through the park master planning process. The SID and PMD creation and the park master plan will occur no later than after fifty percent (50%) of the total Planned Development is sold (147 dwelling units).



Trails as distinct from sidewalks will interconnect some streets, Cove Ditch easement land, and an existing Park Land tree area. Sidewalks shall be a minimum of five feet (5') wide and constructed of concrete or asphalt. Paths may be less than five feet (5') wide and may be natural dirt or covered with rubberized chips, or gravel. Location of sidewalks and paths shall be as determined by Developer.

IX – SITE DEVELOPMENT STANDARDS

Section 1. Street Types and Standards. In the absence of a contrary agreement, all streets shall be developed to the City of Billings standards for width, curb, gutter, sidewalk, cross-section, and surface treatment.

Section 2. Zone Boundaries. The transitional areas between different residential use classifications should be designed to complement the adjacent land uses. Use of buffering landscaping is encouraged to achieve a harmonious change between properties and promote the sense of a single, unified neighborhood.

Section 3. Vehicular Access. Vehicular access into the Planned Development will be provided by Mont Vista Drive, and Bucknell Drive as shown on the attached **Planned Development Exhibit** of the Mont Vista Subdivision. Vehicular access to the lots in this subdivision will also be provided from interior local streets or by private access easements.

Section 4. Outside Storage. No storage area shall be permitted in the front portion of any lot. Storage areas, if any, shall be screened from the ground-level view of adjacent properties and streets. Screening elements shall be of landscape materials or materials similar to those used to construct the primary structure. Storage areas shall comply with applicable building setbacks and must be approved by the Design Review Committee.

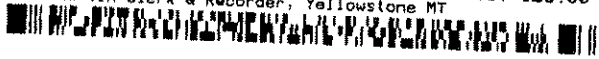
Section 5. Parking Area Development Standards. All parking, access drives and loading areas shall be paved and properly graded to ensure adequate drainage. Minimum parking requirements shall meet the City of Billings standards and parking structures must be approved by the Design Review Committee.

Section 6. Loading and Unloading Areas. Owners may load and unload on their Lot(s) for purposes of their residential use.

X – INSTALLATION OF IMPROVEMENTS

Section 1. Site Lighting Standards.

- A. All outdoor pole lighting on lots shall be at the Lot Owner cost and fully shielded (no light emitted by a fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than eighteen (18) feet above grade.
- B. All outdoor lighting, except street lights, shall be located and aimed or shielded to minimize stray light going across property boundaries.



XI – OTHER REQUIRED DOCUMENTS

Section 1. Other Documents.

- A. Special Improvements Agreement. The City and Developer shall enter into a Special Improvements Agreement that includes provisions for creation of a Mont Vista Park Maintenance District for land dedicated to the City for Park Land, provisions for exchange of Cynthia Park land to Developer and provisions for Special Improvement Districts.
- B. Covenants and Restrictions. Developer may, but is not required to do so, record a declaration of covenants and restrictions that shall supplement this Planned Development Agreement.
- C. Other Documents. Any other documents as may be necessary to implement this agreement shall be executed by the parties hereto.

XII – OTHER REGULATIONS

Section 1. Maintenance. Maintenance by lot Owners between lot lines and the street shall include removal and replacement of dead and dying trees, grass and shrubs, removal of trash and weeds, repair and maintenance of drains, mail boxes whether on or off the Owner's lot, and repair of light standards, fences, walls, surfacing materials and in general maintain a neat and tidy appearance both on the lot and between the lot and the street.

Section 2. Nuisances Prohibited. No noxious or offensive activity shall be carried on, nor shall anything be done in any of the Areas, Open Space or Park Land that may become an annoyance or nuisance to the neighborhood. Offensive activity may include but is not limited to noise from radios, horns, whistles, bells or other sound devices, obstructions of walkways and streets, careless disposition of litter, cigarettes, gum and candy, animal excrement, and animal behavior. The Design Review Committee, in its sole discretion, may determine whether an activity is an annoyance or nuisance and upon Committee request the activity or nuisance shall immediately cease. Failure of the person causing the activity to cease the activity or nuisance may be remedied by the Committee obtaining a court injunction together with damages, attorney fees and costs.

XIII – ENFORCEMENT

Section 1. Right to Enforce by City. The terms of this Agreement may be enforced by the City as provided in the Unified Zoning Regulations.

Section 2. Right to Enforce by Owners. The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the owners of property within the Mont Vista Planned Development and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto, the Design Review Committee, as well as future property Owners. The parties agree the Design Review Committee shall have standing to enforce this Agreement relative to the City or any property owner regardless of whether the Design Review Committee owns a Lot. In addition to all rights under this Agreement, the parties enforcing this Agreement reserve all rights and remedies available at law or in equity, by statute



or otherwise including the right to recover damages, reasonable attorney fees and costs. All such rights and remedies shall be cumulative.

Section 3. Right of Abatement and Suit. If Developer, the Design Review Committee or the City of Billings objects ("the objecting party") to any Owner's or other party's breach of this Agreement ("the defaulting party"), the objecting party shall have, in addition to any other rights and remedies arising at law or in equity, the right to abate the effects of the defaulting party's breach. To exercise the right of abatement the objecting party shall provide the defaulting party with written notice of its objection, specifying the particulars of the objection. If within thirty (30) days of receipt of such notice, the defaulting party fails or refuses to commence to remedy its breach under this Agreement, or if after commencing action the defaulting party fails to cure its default within a sixty (60) day period, the objecting party may perform whatever reasonable maintenance, repair, operation or other curative action as needed to remedy the default. The defaulting party shall pay upon demand to the objecting party the costs of such maintenance, repair, operation or other curative action, together with interest allowed by law from the date of disbursement of such costs until paid in full. The objecting party shall not be responsible for the continued maintenance or repair of any structure or Lot or the performance of the defaulting party's obligation under this Agreement. The objecting party may also prosecute a proceeding at law or in equity to enjoin a violation of the terms of this Agreement, to cause said violation to be remedied or to recover damages for said violation.

Section 4. Limitation on Enforcement. This Agreement is for the benefit of Developer, City, Owners and the Design Review Committee appointed by Developer and their heirs, devisees, assigns, trustees and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Agreement or to enforce the restrictions contained herein, judicially or otherwise.

XIV- AMENDMENTS AND VARIANCES

Section 1. Amendments or Changes. This Agreement may not be amended, modified or terminated in whole or in part, except with the written consent of Developer and the City. The consent of Owners who purchase Lots shall not be required to amend, modify, or terminate this Agreement. Any modifications requested by Developer shall be processed using the same procedures as for a new application in accordance with the Unified Zoning Regulations; however, minor modifications may be approved by the zoning coordinator if he/she finds that the change would not:

- A. Change the overall character of the development;
- B. Change additional allowed uses;
- C. Change the approved minimum setbacks, maximum lots coverage or maximum allowed structure height.

Section 2. Variance Procedures. Variance procedures shall comply with the Unified Zoning Regulations. In no case shall a variance be granted for a use not consistent with those listed within this Agreement or for uses prohibited within the Unified Zoning Regulations.

Section 3. Zone Change Procedures. Zone change procedures shall comply with the Unified Zoning Regulations as established by the City of Billings.



XV- GENERAL PROVISIONS

Section 1. Assignment of Agent. Developer may, in its sole discretion appoint an individual or entity to act as its agent to fulfill the duties and obligations of Developer hereunder. Although not required to be effective, notice of such appointment may be made in writing containing a legal description of the Mont Vista Planned Development land, recorded with the real estate records of Yellowstone County, Montana and mailed to the City at the address specified herein for notices.

Section 2. Assignment by Developer. Developer may, in its sole discretion, assign its rights and delegate its duties under this Agreement in whole or in part to any other person or entity. Notice of such assignment shall be made in writing and recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for the Mont Vista Planned Development, or any portion thereof, affected by the assignment. Notice of assignment and delegation shall also be provided to the City at the address specified herein. Once any notice of delegation has been recorded in the real estate records of Yellowstone County, Montana, Developer shall have no further responsibility or liability for the future performance or non-performance of this Agreement, and the City and all property Owners shall look exclusively to the appointed person or entity.

Section 3. Coordination with Other Regulations. The City Planned Development (PD) Zoning Regulations are considered to be part of this Agreement and by reference are incorporated herein.

If this Agreement or Covenants do not prescribe rules for a particular aspect of the development or use, either by express terms or by implication, then the terms of any other applicable City zoning regulations or development ordinances, including the Unified Zoning Regulations, shall govern. If other zoning regulations or ordinances applicable to the property are subsequently amended, the amended regulations or ordinances shall likewise continue to be applicable to the property to the extent that they are not inconsistent with this Agreement or Covenants. If there is any conflict between this Agreement or Covenants recorded by Developer and Planned Development Zoning Regulations, Unified Zoning Regulations, Subdivision Regulations, or other zoning regulations or ordinances, the terms and conditions of Covenants shall govern.

Section 4. Notices. All notices or demands required to be given hereunder shall be in writing and shall be served upon the other party either personally or by registered or certified mail. Service by registered or certified mail shall be conclusively deemed made three (3) days after deposit thereon in the United States Mail, postage prepaid, addressed to the party to whom service is to be given, as hereinafter provided, and the issuance of the registry or certification receipts therefore. All notices or demands to Developer or the City shall be given at the following addresses or such other addresses as Developer or the City may from time to time designate by written notice given to the other party as hereinabove required.

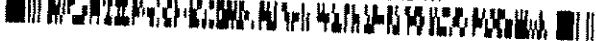
If to Developer: Mont Vista, LLC
2116 Broadwater Avenue, Suite 101
Billings, MT 59102

With copies to: Kadrmas, Lee & Jackson
P.O. Box 80303
Billings, MT 59108-0303

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09/11/2014 10:35 AM Pages: 15 of 18 Fees: 126.00
Jeff Martin Clerk & Recorder, Yellowstone MT



If to the City: City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, MT 59103

With copies to: Planning Division
2825 3rd Avenue North, 4th Floor
Billings, MT 59101

And copies to: City Attorney's Office
P.O. Box 1178
Billings, MT 59108-1178

Section 5. Waiver. Unless expressly so provided in this Agreement, failure of one party to notify the other party of a default in the manner provided in this Agreement shall not be deemed a waiver of any rights that the non-defaulting party may otherwise have at law or in equity as a result of the default.

Section 6. Force Majeure. Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, Acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, terrorist acts, governmental regulations and controls, enemy or hostile governmental action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All parties shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

Section 7. Severability. Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement and the remaining provisions shall remain in force and be binding upon the parties hereto.

Section 8. No Partnership. This Agreement is not intended to create, nor shall it in any way be interpreted to create a joint venture, partnership, or any other similar relationship between the parties.

Section 9. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

Section 10. Recordation. This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of Yellowstone County, Montana.

NOTICE

THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY OF THE MONT VISTA PLANNED DEVELOPMENT LOCATED IN THE MONT VISTA SUBDIVISION OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY AND SHALL FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO

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**THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND
REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.**

Section 11. Duties Run with the Land. The duties created by this Agreement shall run with the land and shall be binding upon Mont Vista, LLC, the City of Billings, property Owners, and their heirs, successors and assigns.

Section 12. Contact Person. Developer hereby designates a contact person who may be contacted concerning any questions, comments, or concerns. Initially, at the time of recording, the contact person is Tracy Haag, 2116 Broadwater Avenue, Suite 101, Billings, MT 59102 (Telephone (406) 951-4200). Upon designation of the Design Review Committee, a member of the committee or an entity appointed by Developer shall be the contact person or entity to replace Tracy Haag.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year indicated by the notarial certifications indicated below.

MONT VISTA, LLC

By

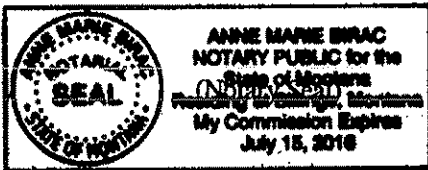
Tracy Haag, Member Agent

STATE OF MONTANA)

: ss.

County of Yellowstone)

This instrument was executed and acknowledged before me on the 10th day of March, 2014 by Tracy Haag, known to me to be the member agent of Mont Vista, LLC.



Notary Signature

Printed name ANNE MARIE BRAC

Notary Public for the State of Montana

Residing at Billings, MontanaMy commission expires: July 15, 2016

CITY OF BILLINGS:

BY:

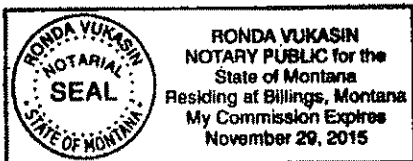
Nicole Cromwell, Zoning Coordinator

STATE OF MONTANA)

: ss.

County of Yellowstone)

On this 3rd day of March, 2014, before me, a Notary Public for the State of Montana, personally appeared Nicole Cromwell, known to me to be the Zoning Coordinator of the City of Billings.



(Notary Seal)

Ronda Vukasin

Notary Signature

Ronda Vukasin

Printed Name

Notary Public for the State of Montana.

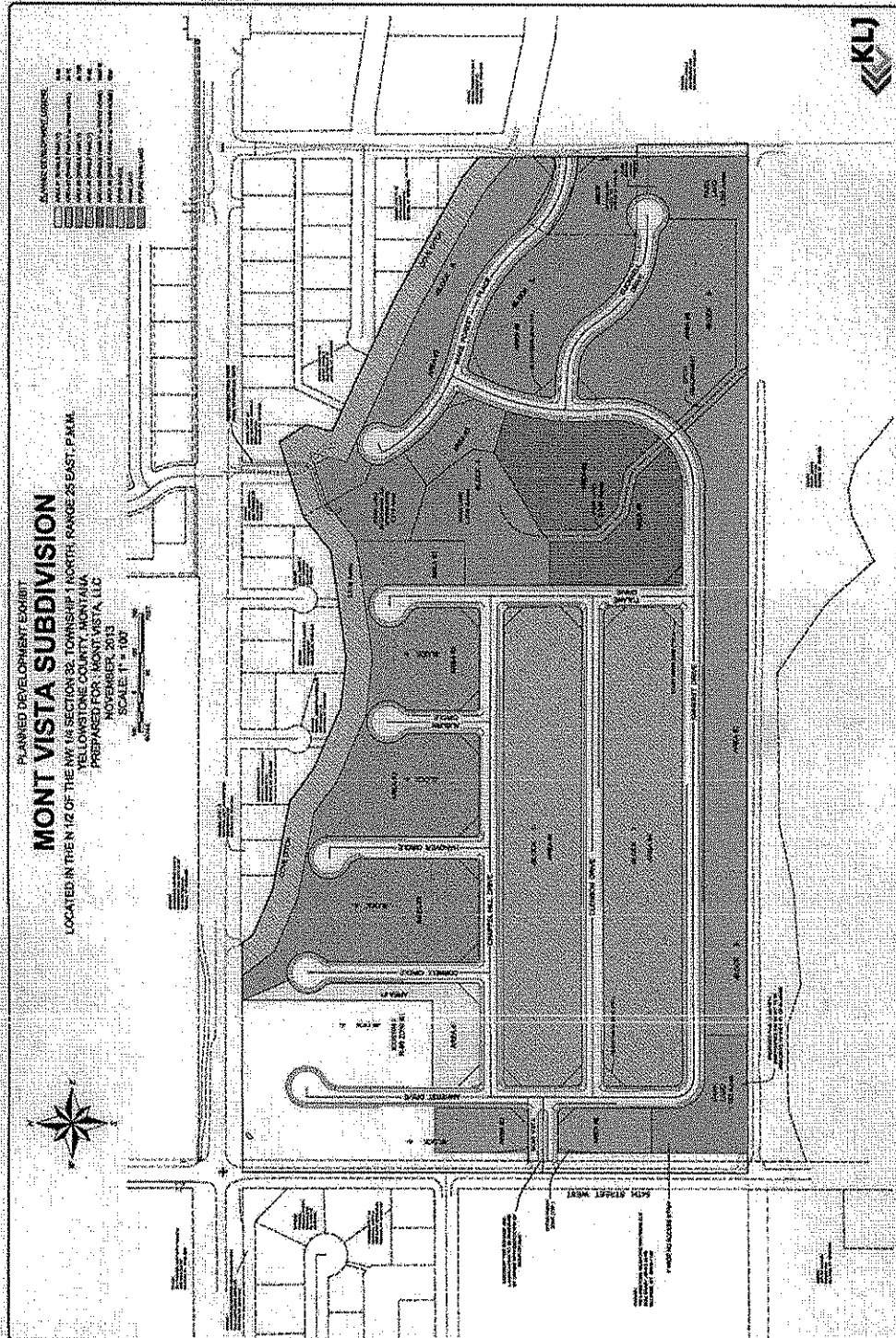
Residing at Billings, Montana.

My Commission expires: 11/29/15

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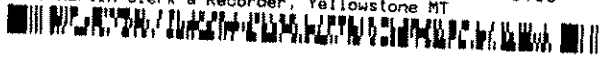
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**SUBDIVISION IMPROVEMENTS AGREEMENT
MONT VISTA SUBDIVISION, FIRST FILING**

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SUBDIVISION IMPROVEMENTS AGREEMENT

MONT VISTA SUBDIVISION, FIRST FILING

This agreement is made and entered into this 28th day of July, 2014, by and between *Mont Vista, LLC*, whose address for the purpose of this agreement is **2116 Broadwater Avenue, Suite 101, Billings, MT 59102**, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the plat of *Mont Vista Subdivision, First Filing*, located in the City of Billings, Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on 14th day of January, 2014, the Board of Planning recommended conditional approval of a preliminary plat of *Mont Vista Subdivision, First Filing*; and

WHEREAS, at a regular meeting conducted on 27th day of January, 2014, the City Council conditionally approved a preliminary plat of *Mont Vista Subdivision, First Filing*; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to *Mont Vista Subdivision, First Filing* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

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Subdivider requests no variances.

II. CONDITIONS THAT RUN WITH THE LAND

- A. Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development. The City of Billings reserves the right to construct sidewalks not completed within three (3) years of final plat recording and to assess the adjacent property owners for the cost of the sidewalk construction.
- B. Lot owners should be aware that this subdivision is being built in close proximity to wildlife habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety. Any impacts associated with wildlife and damage arising therefrom is the responsibility of lot owners.
- C. Due to presence of variable on-site soils that may affect building construction, individual geotechnical evaluations are recommended by the Subdivider's geotechnical engineer.
- D. No water rights are transferred to the lot owners. Irrigation ditches that exist on the perimeter and interior are for the benefit of other properties. Interior ditches may be altered by developer with permission from respective owners. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.
- E. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts, which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.



- F. The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) filed with the city and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.
- G. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are defined within Chapter 28, BMCC and detailed in the Billings Stormwater Management Manual.
- H. Individual lot owners should be aware that a Planned Development Agreement for Mont Vista Subdivision has been executed between the City and Subdivider. Copies of the Planned Development Agreement, which contains provisions pertinent to land use, construction requirements, and parks, may be obtained from the City Planning Division.
- I. Cove ditch along the north side of the subdivision may overtop its banks and water flow down the roads within the subdivision in large storm events. All lots shall be graded to direct stormwater run-off away from houses, to street, side yard swales and other improved drainage ways. Window well elevations and other building perforations that are subject to infiltration of flood water from streets shall be established at a minimum of 15-inches above adjacent top of curb elevations. On lots 16 & 17 of Block 3, said building perforations at the back of the houses shall be set at a minimum elevation of 15-inches higher than the adjacent berm along the back of those lots.

III. TRANSPORTATION

A. Streets

All streets will be constructed to grade with satisfactory subgrade, base course, curb and gutter, sidewalks, and asphalt paving according to City of Billings site development ordinance, and Subdivision Regulations in place at the time of construction. Subdivider will enter into a private contract for the construction of all required improvements for those streets within or adjacent to the subdivision as follows:



- The subdivision entrance between 54th Street West and Horizon Court will have a 75-foot right-of-way width, a 13-foot wide landscaped center median measured from back of curb to back of curb, and one-way asphalt pavement sections on each side of the median.
- All other roads interior to the subdivision will have 56-foot wide right-of-ways and 34-foot wide asphalt pavement sections measured from back of curb to back of curb.
- **54th Street West:** 54th Street West is designated as a Minor Arterial and is to be located within a 100-foot right-of-way, which conforms to right-of-way widths in adjacent subdivisions for 54th Street West. That portion of 54th Street West adjacent to the subdivision has been partially constructed; the existing street includes approximately 26 feet of asphalt. The Subdivider will provide a cash-in-lieu contribution, due prior to filing a final plat, for the balance of constructing half of a residential street width with a satisfactory sub-base, base course, standard curb and gutter, sidewalk and any necessary tapers on 54th Street West along the frontage of Mont Vista Subdivision, First Filing. Credit will be given for that existing portion of 54th Street West already constructed. The cash-in-lieu contribution will be based on a cost estimate approved by the City Engineering Division, and will also include engineering design and construction administration.
- A 50-foot wide right-of-way half width will be dedicated on the east side of 54th Street West.
- 50th Street West is currently undeveloped and will not require improvements until lot development occurs in subsequent filings adjacent to the 50th Street West right-of-way.

B. Sidewalks

All sidewalks interior and exterior to the subdivision shall be 5-feet wide and include minimum 5-foot boulevards. Sidewalks on internal streets shall be installed at the time of individual lot development, unless otherwise stated herein. Where required, Subdivider will install accessibility ramps concurrent with subdivision street improvements.

The Amherst Drive sidewalk adjacent to park land in the southwest corner of the subdivision will be constructed concurrent with adjacent street improvements.

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Sidewalks along the east side of 54th Street West adjacent to the subdivision will be constructed at the same time as 54th Street road improvements.

C. Street Lighting

Street lights are to be installed at the 54th Street West subdivision entrance concurrent with the Mont Vista Subdivision, First Filing. Payment for energy and maintenance of entrance street lights will be made by a Homeowner's Association, which may elect to incorporate such lights in to a future Special Improvement Lighting Maintenance District (SILMD) if applicable. No other street lights are required at this time; provided, however, that in the construction contract for the street improvements required hereunder, the Subdivider shall install conduits at street crossings at the time of street and sidewalk construction to accommodate the future street light wiring. If future street lights are installed, a SILMD may be formed according to City of Billings requirements.

D. Traffic Control Devices

Subdivider will install traffic signs in accordance with construction drawings approved by the City of Billings Engineering Division.

In addition, the Subdivider shall make cash-in-lieu contributions toward the improvement costs associated with the future signalization of the intersection of Rimrock Road and 54th Street West, and the intersection of Grand Avenue and 54th Street West. These contributions are based on the percentage of average daily traffic (ADT) contribution to each intersection multiplied by a proration factor of 89/252. The proration factor is determined as the number of residential lots platted in Filing One divided by the estimated total number of dwelling units in the overall Mont Vista Subdivision Master Plan area which was used for estimating ADT contributions at each intersection.

It is assumed that the signalization of each intersection will cost \$250,000.00. The subdivision is expected to contribute 3% of ADT to the intersection of Rimrock Road and 54th Street West and 6% of ADT to the intersection of Grand Avenue and 54th Street West. The associated cash contribution to the City of Billings are estimated as follows:

Rimrock Road and 54th Street West: $\$250,000 \times 3.0\% \times 89/252 = \$2,648.81$

Grand Avenue and 54th Street West: $\$250,000 \times 6.0\% \times 89/252 = \$5,297.62$



Total Contributions for future intersection signalization = \$7,946.43

E. Access

Permanent access to the Mont Vista Subdivision, First Filing will be from one entry off of 54th Street West. A second access will be provided with the Mont Vista Subdivision, First Filing by constructing a temporary emergency access road from the Mont Vista and Amherst Drive intersection, north to Rimrock Road. A second permanent access from 50th Street West will be provided in the future when the filing adjacent to 50th Street West is developed, as depicted on the attached Mont Vista Subdivision Master Plan.

F. Billings Area Bikeway and Trail Master Plan (BABTMP)

The BABTMP identifies a future trail corridor immediately south of the subdivision through the adjacent property and generally along the High Ditch. Also, 54th Street West is identified as a street where a proposed bike lane could be constructed in the short range. However, the subdivision will not provide BABTMP improvements at this time.

G. Public Transit

The subdivision does not require public transit accommodations at this time. The nearest current access to fixed route public transportation is City of Billings Route 2P stopping at St. John's Lutheran Ministries at 3940 Rimrock Road.

IV. EMERGENCY SERVICE

The City will provide emergency service to the Mont Vista Subdivision. Fire hydrants shall be provided at each street intersection and at intermediate locations where distances exceed 500 feet. Appropriate turn-arounds will be located on any dead end street or fire apparatus access road in excess of 150 feet.

The primary access to the Mont Vista Subdivision First Filing will be from one entry off of 54th Street West. A secondary emergency access shall be provided by a temporary emergency access road connecting Amherst Drive to Rimrock Road. A second permanent access from 50th Street West will be provided in the future

when the filing adjacent to 50th Street West is developed, as depicted on the attached Mont Vista Subdivision Master Plan.

The secondary emergency access road shall be constructed in accordance with the International Fire Code and Subdivision Regulations as adopted by the City of Billings. A cross-sectional design of the emergency access road including location, section, surfacing, drainage, and design of gate or other barriers, and signage shall be submitted to and approved by the Fire Department and Engineering Department prior to construction. Maintenance of the emergency access road, the gate or other barriers, and signage shall be the responsibility of the developer. The temporary emergency access road shall be completed prior to the issuance of any building permits for construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.). The temporary emergency access will be eliminated when a permanent secondary access to the subdivision is provided to Rimrock Road via 50th Street West.

Fire Protection During Construction

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to allow for fire suppression requirements. Prior to issuance of a building permit for construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.), fire apparatus access roads and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along an approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of 20' wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.

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- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the City of Billings Stormwater Management Manual (BSWMM) in place at the time of development.

Stormwater management shall include a stormwater detention pond in the private park area on Lot 4 of Block 3. The pond shall be designed and constructed in accordance with the BSWMM and maintained by the Homeowners Association. The Declaration of Covenants and Restrictions for the development shall include a maintenance plan with the following items:

- Pond shall be mowed weekly during normal growing season.
- Special care shall be taken to prevent tree roots or other landscaping elements from interfering with boulder pit and boulder pit piping.
- Clippings shall be removed from the site to avoid clogging of inlets and/or boulder pit.
- Inlet sumps shall be inspected a minimum of once a year and cleaned out as needed. Preferably this would include one inspection in the spring before heavy rains begin.
- Storm Drain Sediment Treatment Structure shall be maintained by the City of Billings.

The Homeowners Association has the right and responsibility to re-evaluate and amend the maintenance plan based on applicability of maintenance requirements over the life of the stormwater management system.

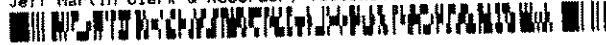
A perpetual stormwater easement over Lot 4 of Block 3 shall be granted to the City of Billings. The easement will give the City the right to enter and maintain the stormwater management system in the event that the Homeowners Association fails to uphold their maintenance responsibilities. This easement does not relieve the Homeowners Association from their maintenance responsibilities.

VI. UTILITIES

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The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department – Engineering Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications.

The Subdivider acknowledges that the subdivision shall be subject to the applicable System Development and Franchise Fees in effect at the time new water and/or sanitary sewer service connections are made.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

All power, telephone, gas, and cable television lines shall be the responsibility of the Subdivider. Any line located within public right-of-way shall be subject to approval of the City Engineering Division.

VII. PARKS/OPEN SPACE

In accordance with the existing Planned Development Agreement, Billings Subdivision Regulations Article 23-1000 and MCA 76-3-621, for the purposes of Mont Vista Subdivision, First Filing and all subsequent filings, park land requirements will be satisfied through a combination of park land dedication, in addition to set asides comprised of private parks and open space. These areas are depicted on the attached Mont Vista Subdivision Master Plan.

Cynthia Park which lies within the boundary of the development and is currently owned by the City has an area of 0.810 acres or 35,263 square feet. The City will abandon and deed Cynthia Park and the adjacent Cynthia Park Drive right-of-way to the Subdivider. In exchange the Subdivider will dedicate 0.810 acres of public park land in addition to the park land area required by the Subdivision Regulations.

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The 0.810-Acre park land located in the northeast corner of Mont Vista Subdivision, First Filing, which is to be created as a replacement for Cynthia Park, will be dedicated by the Subdivider to the City. This public park land is contiguous to additional 1.755-Acre public park land located to the south, which will be dedicated by the Subdivider to the City in the same manner.

The 1.755 Acre park land to be dedicated to the City will also provide an area for stormwater detention. To minimize impacts to park users, stormwater from the development will only be allowed to back up into the stormwater detention area during moderate to large storm events. Low flow events, or nuisance stormwater, will be required to pass through without ponding in the park. The south end of the park, where stormwater detention will be provided will be graded to soften existing slopes and make the park more usable. The grading will be completed by the subdivider. A grading and drainage plan shall be prepared in cooperation with the Parks Department and approved by the Parks Department prior to grading. The road embankment adjacent to the park shall not exceed a height of 4 feet or a slope of 6:1. To maximize the usable park area, the existing ditch running through the middle of the park will be re-aligned to the south east boundary.

Park land requirements for Mont Vista Subdivision, First Filing are summarized as follows:

Mont Vista Subdivision First Filing	Lot Area (Acres)	Required 11% Park Area (Acres)	Provided Park Area (Acres)	Surplus Park Area (Acres)*
	14.537	1.599	3.099	1.500

The 1.500-Acre surplus park area (denoted by * above) provided by Mont Vista Subdivision, First Filing will be applied as a credit toward future park land as required with Mont Vista Subdivision subsequent filings.

The 1.3437-Acre park in the southwest corner of the property will be created by the Subdivider as a private park for the benefit of the residents of the subdivision, and will be maintained by a Homeowners Association. The park, which is also a storm water detention pond, will be designed and constructed in accordance with City requirements. The park will be landscaped in accordance with a landscape plan prepared by the subdivider. The landscaping obligation occurs no later than the time at which fifty percent (50%) of the lots in Mont Vista Subdivision, First Filing have been sold. A perpetual stormwater easement over the private park land will be granted to the City of Billings.

In accordance with the existing Planned Development Agreement, the Subdivider is not responsible for development of City (public) park land.

VIII. IRRIGATION

The Cove Ditch is an existing irrigation ditch along the north side of the Mont Vista Subdivision, which serves various properties to the east. Perimeter ditches and drains shall remain in place and shall not be altered by Subdivider or subsequent owners without written permission.

Easements are provided on the plat to allow perpetual maintenance by perimeter and interior ditch owners. Such easements have been created based on the ditch owners' requested dimensions. Permanent structures or utilities will not be allowed within these easements unless approved by the ditch owners.

A Storm Water Pollution Prevention Plan will be required for the proposed construction, and such plan will incorporate provisions for protection of the irrigation ditches from runoff, sediment, and chemical contamination.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical evaluation for roads and new utilities was completed by SK Geotechnical entitled "Geotechnical Evaluation, Proposed Streets and Utilities for Mont Vista Subdivision, Rimrock Road and 54th Street West, Billings, Montana." Refer to the geotechnical report for soil test results, classifications and construction recommendations, copies of which may be obtained from the City Planning Division or Engineering Division offices.

Due to presence of variable on-site soils that may affect building construction, individual geotechnical evaluations are recommended by the Subdivider's geotechnical engineer, prior to building permit application.

X. PHASING OF IMPROVEMENTS

Subdivider does not intend to develop in phases.

XI. FINANCIAL GUARANTEES

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Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a private contract secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XII. LEGAL PROVISIONS

- A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings.
- B. The owners of the properties involved in this proposed subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.
- C. The covenants, agreements, and all statements in this Agreement apply to and shall be binding on the heirs, personal representatives, successors and assigns of the respective parties.
- D. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party of the party giving notice shall be entitled to reasonable attorney fees and costs.
- E. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.
- F. Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

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IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"SUBDIVIDER"

Mont Vista, LLC

By:

It's:

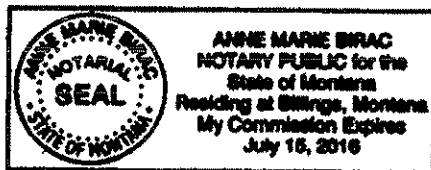
Tracy Haag
Member

STATE OF MONTANA)

: SS

County of Yellowstone)

On this 8th day of July, 2014 before me, a Notary Public in and for the State of Montana, personally appeared Tracy Haag, known to me to be the Member of Mont Vista, LLC, who executed the foregoing instrument and acknowledged to me that he/she executed the same.



Anne Marie Birac
Notary Public in and for the State of Montana
Printed Name: ANNE MARIE BIRAC
Residing at: BILLINGS, MT
My commission expires: 7-15-16

This agreement is hereby approved and accepted by the City of Billings, this 8TH day of July, 2014.

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"CITY"

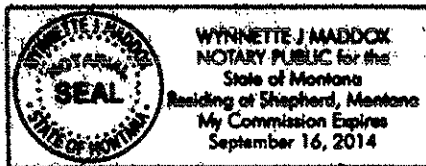
CITY OF BILLINGS, MONTANA

By: Thomas W. Hanel
Mayor

Attest: Cari Martin
City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this 28th day of July, 2014, before me, a Notary Public in and for the State of Montana, personally appeared Thomas W. Hanel and Cari Martin, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.



Wynnette J. Maddox
Notary Public in and for the State of Montana
Printed Name: Wynnette J. Maddox
Residing at: Shepherd MT
My commission expires: 9-16-2014

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Jeff Martin Clerk & Recorder, Yellowstone MT



Waiver of Right to Protest

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

Mont Vista Subdivision, First Filing

Signed and dated this 8th day of July, 2014, before me, a Notary Public in
Mont Vista, LLC, known to me to be the Member
By: [Signature]
It's: Member



STATE OF MONTANA)
: ss
County of Yellowstone)

On this 8th day of July, 2014, before me, a Notary Public in
and for the State of Montana, personally appeared Tracy Haag,
known to me to be the member of Mont Vista LLC, the person who
executed the forgoing instrument and acknowledged to me that he/she executed the same.

Return to:
KLJ - Attention Travis Copper, PE
PO Box 80303
Billings, MT 59108-0303

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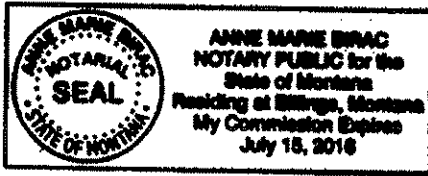
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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

Anne Marie Birac
Notary Public in and for the State of Montana
Printed Name: ANNE MARIE BIRAC
Residing at: Billings, MT
My commission expires: 07-15-16

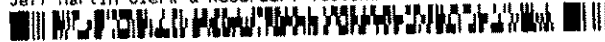


Kadmas Lee + Jackson Inc.
PO Box 80303
Big MT 59108-0303
Attn: Anne

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DECLARATION OF COVENANTS AND RESTRICTIONS
FOR PART OF MONT VISTA SUBDIVISION, FIRST FILING

THE UNDERSIGNED, MONT VISTA, LLC, a Montana Limited Liability Company, TRACY A. HAAG as a Member, Owner of the following described real property, Developer of Mont Vista Subdivision, First Filing, hereby declare these covenants and restrictions applicable to all of the following lots:

Lots 19 through 36,	Block 1
Lots 1 through 36,	Block 2
Lots 1 through 25,	Block 3
Lots 61 through 68,	Block 4

All in MONT VISTA SUBDIVISION, First Filing, in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. _____.

The lots described above, and any Lots subsequently subjected to the provisions of this Declaration are referred to herein and in the Bylaws attached to this Declaration as "the Lot (s)".

These Covenants are placed upon the Lots for the benefit of the owners of all or any part of those lots, for the purpose of protecting the value and desirability of all of the Lots.

The covenants herein contained shall run with the land and shall be binding on the undersigned and all persons and parties claiming under them, their successors and assigns.

The Grantees of all or any part of any lot, by acceptance of a conveyance, covenant and agree faithfully to observe and abide by all of said subdivision covenants and restrictions, easements, assessments, charges and liens set forth herein.

Developer reserves the right for itself, in its sole discretion, to add additional subdivided Lots located upon Tracts 1 & 2 of Certificate of Survey 2054 Amended, Yellowstone County, Montana, to the provisions of this Declaration without the consent of any other owner, mortgagee, or trustee or beneficiary of any trust indenture. Mont Vista, LLC may add additional Lots to the provisions of this Declaration by executing and recording one or more amendments to this Declaration, subjecting the property to the provisions of this Declaration and designating any additional private parks or facilities benefitting all Lots to be maintained by the Association. All Lots added in this manner shall be bound by the terms of this Declaration, and any additional common property or facilities shall be maintained by the Association, pursuant to the terms of this Declaration.

From and after the recording date of each such amendment, if any, the owners of any Lots thereby made subject to the provisions of this Declaration shall be bound by the provisions of this Declaration to the same extent as the Lots described above.

1. MEMBERSHIP IN OWNERS ASSOCIATION.



All Owners of the Lots and their heirs, successors and assigns shall be members of a Montana non-profit corporation, formed or about to be formed, known as "MONT VISTA HOMEOWNERS ASSOCIATION, herein called the Association".

"Lot Owner", as used in this Declaration and the attached Bylaws, shall mean each person or entity, as shown by the records of the Yellowstone County Clerk and Recorder, owning all or any part of any of the Lots. If a Lot Owner has sold to a third person under the terms of an agreement for future delivery of title, and notice of such agreement is recorded with the Yellowstone County Clerk and Recorder, the purchaser shall be deemed to be the Lot Owner. A personal representative, conservator, or trustee shall be deemed to be the Lot Owner of any lot held by him or her in such capacity, whether or not the same shall have been transferred in to his or her name by a duly recorded conveyance.

Co-owners or joint owners of a lot shall be deemed to be one member for the purposes of voting and assessment.

The Association initially shall have the following two classes of membership:

- a. Class "A" Members. Class "A" Members shall be all owner of the lots, except the Developer.
- b. Class "D" Members. MONT VISTA, LLC, RIMROCK 54, LLC, HLL, LLC and all assignees of the development rights of either of them, if any, shall be the Class "D" Members of the Association. Upon sale of all of the Lots by the Class "D" Members, this class shall cease to exist and the only class of Members shall be the Class "A" Member.

One membership is appurtenant to and runs with each lot in Mont Vista Subdivision. A membership shall not be transferable except upon transfer of the lot to which it is appurtenant.

The affairs of Mont Vista Homeowners Association, Inc. shall be governed by its Bylaws, attached hereto as Exhibit "A".

2. PURPOSE OF THE ASSOCIATION.

The Association has been formed for the purpose of maintaining, repairing and replacing the improvements which benefit all of the Lots and which are not maintained by the City of Billings, including the following:

- a. Seasonal maintenance of the storm water detention system for drainage from the public streets into the interim and final detention ponds;
- b. Maintenance of private pedestrian walking trails and parks in Mont Vista Subdivision;
- c. Maintenance, repair and replacement of wells and pumps, if any, and waterlines and sprinklers used for landscaping irrigation in the private parks;
- d. Maintenance, repair and replacement of entry signs in the entry parks for the subdivision; and



- e. Maintenance and repair of fences or walls adjoining 54th Street and Rimrock Drive, if any.
- f. O&M plan for the southwest pond:
 - Pond shall be mowed weekly during normal growing season.
 - Special care shall be taken to prevent tree roots or other landscaping elements from interfering with boulder pit and boulder pit piping.
 - Clippings shall be removed from the site to avoid clogging of inlets and/or boulder pit.
 - Inlet sumps shall be inspected a minimum of once a year and cleaned out as needed. Preferably this would include on inspection in the spring before heavy rains begin.
 - Storm Drain Sediment Treatment Structure shall be maintained by the City of Billings.

The Association shall also own and maintain the Lots on which the final detention pond(s) which serves the subdivision is eventually located, and the private parks in the Subdivision, and shall have the right to enforce these Covenants and Restrictions.

3. ASSESSMENTS.

- a. Assessments. The Association, through its Board of Directors, shall establish and collect regular maintenance assessments from the owners of completed homes on the lots to pay for the Association's expenses for the maintenance and repairs described in Section 2 above, and for maintenance and repair of any other improvements serving all of the subdivision; and for
 - i. Liability insurance insuring the Association and its members against liability resulting from the Association's maintenance of the above-described improvements ;
 - ii. For Officer's and Director's liability insurance;
 - iii. For administrative and legal expenses;
 - iv. For property taxes and liability insurance on the detention pond lot (s) and the park lots owned by the Association; and
 - v. For any other expenses which benefit Mont Vista Subdivision if authorized by 75% of the members entitled to vote.

All costs incurred by the Association shall be divided equally among the owners of each home on any of the Lots. However, no owner of a home shall be assessed by the Association until a certificate of occupancy has been issued or the home is completed. Assessments begin, and will be collected from each homeowner, at the time construction of a home on the owner's lot is completed or certificate of occupancy is issued.



The term "Home Owner" shall mean the owner of a completed residence; the term does not include owners of all or part of any of the Lots on which a residence has not been constructed, or on which a residence is under construction but not yet completed.

- b. Payment of Assessments. Assessments for each completed home shall be payable annually on the second day of January of each year unless the Board determines that a different payment schedule is needed. A prorated assessment for the year shall also be due and payable at the time construction of a new home is completed. Assessments paid more than 30 days after the date when due shall bear interest at the rate of 10% per annum from the due date until paid or at the highest rate of interest permitted by Montana law, whichever is less. All payments shall be applied first to interest and then to the earliest assessment due. Interest collected shall become part of the Association's account. All assessments collected by the Association may be commingled in a single fund. The Secretary-Treasurer of the Association shall maintain records showing the amounts of all assessments paid and unpaid by each Home Owner. Such records shall be available for inspection at all reasonable times by Home Owners or their representatives.
- c. Covenant to Pay Assessments. Each Owner of a completed home, by signing these Covenants or by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to pay to the Association a share of the costs lawfully assessed by the Association and to waive any right said Home Owner may have, under the laws of the United States or the State of Montana, to claim a homestead exemption for said assessments.

Each Owner of a completed home and their grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of conveyance of any home, but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee. The Secretary-Treasurer of the Association shall notify third parties, upon their request, of the amount of unpaid assessments on any home.

4. CONSTRUCTION.

- a. Zoning. All buildings and other structures must comply with City of Billings zoning regulations, as amended from time to time.
- b. Building Height.
- | | |
|--|---------|
| One story structure: | 30 feet |
| Two story structure: | 35 feet |
| Split level and split entry structure: | 30 feet |
| Separate garage: | 18 feet |
| Accessory building: | 12 feet |
- c. Minimum Size. Any single story home erected on any of the lots shall have a ground floor area of not less than 1,100 square feet, exclusive of open porches and garages; any split level or tri-level residence erected on any of the lots shall have a ground floor area of not less than 1100 square feet in the main structure within the perimeter of the



exterior walls, inclusive of open porches and garages; two-story residences shall have not less than 900 square feet on the ground floor, exclusive of open porches and garages. Minimum size of the garage shall be not less than 480 square feet.

- d. Set Back Requirements. No building or structure shall be erected, placed, constructed or remodeled so as to be less than 20 feet from the front lot line, less than 5 feet from the side lot line or less than 20 feet from the rear lot line, except that corner lots shall have a 10 foot setback requirement from the side lot line contiguous to courts or roads. All setbacks must meet the minimum City of Billing requirements.
- e. Garages. Each residence shall have a two or three car enclosed, attached or unattached garage with garage doors no more than nine feet high. Garages which house more than three cars in width shall not be permitted.
- f. New Construction Only. All residences and other buildings and structures erected on any of the lots shall be of new construction and built with new or suitable reclaimed materials. No old buildings shall be moved upon any of the lots. No off-site manufactured residences, including, but not limited to modular homes, manufactured homes and mobile homes, are permitted on any of the Lots.
- g. Outbuildings. One outbuilding or storage shed may be constructed on each Lot. Outbuildings must be of new construction and built with new or reclaimed materials of like product to match the home. A new prefabricated storage shed is not permitted. The outbuilding shall be kept in a good state of repair and shall not be allowed to become rundown or an eyesore to the neighbors. No carports shall be permitted in Mont Vista Subdivision, First Filing. No shed or outbuilding shall be constructed less than 35 feet from the front lot line. No outbuilding shall set forward of the front of the home.
- h. Speed of Construction. Any structure erected on any of the lots shall be fully enclosed, sided and shingled, within one hundred eighty days after equipment and/or materials to be used in construction have been moved onto the location, and all construction shall be pursued with reasonable diligence. No excavations, shall be permitted on any of the lots until such time as the actual construction of the building is to begin, except that the owners test for subsoil conditions, provided that such test sites are replaced to their original condition. The provisions of this sub-section do not apply to Mont Vista, LLC.
- i. Utility Lines. All utility lines and pipes shall be placed underground; no overhead lines shall be permitted.
- j. Exterior of Structure. All structures shall have an exterior surface of natural wood, synthetic wood, stone, brick, stucco or a combination thereof. Other materials may be used for exterior walls provided that such materials are designed and located in harmony with the surrounding structures and natural land features. All structures shall be sided with conventional siding, and no asbestos siding, siding of an asphalt composition, vinyl siding, T-111, or steel siding may be used



except metal for soffit and fascia, unless on an approved basis of the architectural committee. Color schemes must be earth tones for all structures and natural land features. Natural rock or brick, cultured stone or cultured brick may be used on exterior wall surfaces. Masonry block construction is not allowed.

- k. Fences. All home perimeter fences shall be erected of PVC except lot lines adjacent to arterial streets. No other materials will be allowed. All new fences must be the same color as the existing fences in the subdivision and must be similar in style to existing fences. Masonry walls of same color and material may be used to construct along lots common to 54th Street and Rimrock Drive. This restriction may be waived by the Architectural Control Committee in their sole discretion if approved by 75%.
 - l. Height of Fences and Hedges. Fences, hedges, or other structures, when placed between the principal residence and the front or side Lot line shall not exceed six feet in height from the finished grade. All fences and other structures will not be allowed in the front yards, or any area between the front of the house and the street the house is facing and may be of steel or vinyl.
 - m. Lighting. A yard light must be installed within ten feet from the front lot line. The yard light shall be a minimum of seven feet from ground level. It shall be connected to a photocell, which will turn the light on at dusk and off at dawn. The maintenance of this light shall be the responsibility of the homeowner.
 - n. Landscaping. Lot owners shall plant, maintain, and, in case of death or destruction, replace one Linden tree in the front yard of any lot within one year after each residence is occupied. Each tree shall be at least 6-feet in height. In addition, a lawn or other form of permanent landscape must be installed and maintained within six months after a residence is first occupied. These Landscaping requirements may be waived by the Architectural Control Committee, in its discretion. All waivers must be in writing and must be obtained before planting.
 - o. Drainage. There shall be no interference with the established draining pattern over any lot as to affect any other lot, unless an adequate alternative provision is made for proper draining. For the purpose hereof, "established drainage" is defined as the drainage, which exists at the time the lot, is conveyed to an owner or a participating builder.
 - p. Weeds. All weeds or other noxious growths shall be abated or eradicated on all Lots.
 - q. Special Conditions. Window wells, doors and other openings into houses located on Lots 16, 17, 18, Block 3 must be placed above an elevation of 3352.8.
5. RESTRICTIONS ON USE.
- a. Primary Use. The primary use of each of the lots shall be for only residential purposes.



- b. Occupancy. No living quarters shall be occupied prior to issuance of a certificate of occupancy by the City of Billings. No trailer, tent, garage, or outbuilding shall at any time be used as a residence, temporarily or permanently, nor shall any structure, of whatsoever nature, of a temporary character, be used as a residence.
- c. Quiet Hours. Noise limitations shall comply the City of Billings Ordinances. Quite enjoyment hours shall be the following:

Summer Hours- 7:00 PM - 7:00 AM

Winter Hours- 6:00 PM - 7:00 AM

- d. Unlawful Activities and Nuisances. No unlawful activity shall be permitted on any of the lots, nor shall anything be done thereon which may become a nuisance to the neighbors.
- e. Parking. Motor homes may be temporarily parked on streets or driveways, for periods not exceeding seven consecutive days or thirty total days in any calendar year.

No abandoned, junked, inoperable or wrecked vehicles, motorhomes, boats, RVs, ATVs, UTVs, snowmobiles or other cargo trailers shall be stored outside on any of the lots for a period greater than 7 days.

No inoperable or unlicensed vehicle shall be parked outside on any of the lots or on any public street in Mont Vista Subdivision, for a period of more than twenty-four hours. No overhauling or major repair of vehicles is allowed in Mont Vista Subdivision.

- f. Animals. No swine, goats, sheep, cows, horses, livestock and/or poultry of any nature shall be kept or permitted on any of the Lots. Pets are permitted on a Lot only if kept under the owner's control at all times. Owners shall be responsible for promptly cleaning up after their pets and for payment for any damage caused by their pets.
- g. Trash. No junk, trash, debris, organic or inorganic waste shall be permitted to accumulate on any of the lots or in any street in Trails West Subdivision, First Filing; all junk shall be promptly and effectively disposed of, and no lot shall be used as a dumping ground or burial pit. Garbage containers shall be concealed from view by fences, hedges or other means, except on collection day.
- h. Signs. No signs, billboards, posters, or advertising of any kind or character shall be erected or displayed upon any of the lots, excepting subdivision promotion signs, signs displayed to identify the occupants of a dwelling, Realtors' signs, for sale signs, temporary campaign or ballot initiative posters, and contractors' construction signs.
- i. Clothes Lines. No clothes lines, wires or devices for hanging clothes shall be erected in the front or side of any home.
- j. Satellite Dishes. No television or satellite dishes shall be permitted on any lot unless the dish is no larger than one meter in diameter and placed in an inconspicuous location on the lot. These satellite dish



requirements may be waived by the Architectural Control Committee, in its discretion. All waivers must be in writing and must be obtained before installing the satellite dish. No projections of any type (excluding satellite or high speed internet) shall be placed or permitted to remain above the roof of any building within the development.

- k. Utility Cables. All utility cables and wires shall be installed underground and no radio, short wave, CB, TV antennas or any other tower shall be erected on the lot.
- l. Maintenance. All lot owners shall be obligated to maintain their homes, garages, outbuildings and yards so that they are clean, tidy and in good repair. Lot owners shall not permit peeling paint, broken sidewalks or driveways, broken shingles, or any other unsightly condition on their property. Lawns must be kept mowed and dead or dying trees and shrubs must be removed so that all properties in Mont Vista Subdivision, First Filing, reflect a high pride of ownership.
- m. Rental. The rental of a portion of a residence or garage shall not be permitted. Rental of the entire residential structure is permitted.

6. DISCLOSURE.

No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Lot Owners.

7. ARCHITECTURAL CONTROL COMMITTEE.

Mont Vista, LLC shall appoint an Architectural Control Committee to review plans and specifications for homes and other improvements to the lots for compliance with the provisions of this Declaration. The Architectural Control Committee shall be composed of three individuals, all residents of Billings. The majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member or members of the Committee, Mont Vista, LLC shall have full authority to designate a successor or successors. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant.

No construction or improvements, or alterations affecting the external appearance of any existing buildings, and no secondary buildings, fences, walls, or similar improvements shall be made, erected, altered, or placed, or permitted to remain upon any lot until a site plan and specifications showing the design, location, material, and color shall have been submitted to the Architectural Control Committee and approved in writing by the Committee for conformance with the provisions of this Declaration. In the event the Committee fails to approve or disapprove such design, location, construction, and materials within 30 days after the detailed site plan and specifications have been submitted to it, the plans shall be deemed to have been approved. Owners shall not begin construction or modification until the plans, specifications, and proposals have been



approved by the Committee. Any deviation from an approved plan which in the judgment of the Committee violates the provisions of this Declaration shall be corrected to conform to the plan as submitted.

8. ENFORCEMENT.

- a. Right to Enforce. The Association, the Architectural Review Committee, and each and every one of the Home Owners shall have the right to enforce these covenants and any and all amendments thereto by civil action, including the right to injunctive relief, prohibitive or mandatory, to prevent the breach or enforce the observance of the covenants set forth above or hereafter imposed, and for damages, it being presumed that some damage would be occasioned, by reason of the failure of any Home Owner or Owners to comply with these covenants.
- b. Remedies for Non-Payment of Assessments. All unpaid sums assessed by the Association for any completed home, together with interest, collection costs, costs of suit or arbitration, and reasonable attorney fees, shall constitute a lien on the home and the Lot on which it is located, and if filed of record, the lien may be foreclosed in the same manner as a construction lien. Each assessment, together with interest, collection costs, costs of suit, and reasonable attorney fees shall also be the personal obligation of the owners of the home against which the assessment was made at the time the assessment fell due. Furthermore, suit to recover a money judgment for unpaid assessments may be maintained by the Association against a non-paying homeowner without foreclosing or waiving the lien securing the same.
- c. Costs and Attorney Fees. All costs of collection of delinquent assessments, including but not limited to, court costs, costs of filing liens, and attorney fees, shall be the obligation of the non-paying Home Owners, and may be added to the next regular assessment for that home. No sale or transfer of a home shall relieve the grantee or transferee from liability for past due assessments or from the lien thereof. All rights, remedies and privileges granted to the Association or the Home Owners pursuant to the terms hereof shall be deemed to be cumulative.

The losing party in any action, lawsuit, or arbitration proceeding brought to enforce this Declaration shall be obligated to pay the reasonable attorney fees incurred by the prevailing party, together with costs incurred in the action, lawsuit, or arbitration proceeding.

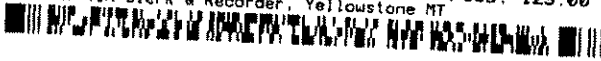
9. AMENDMENT.

Any provision herein may be amended or revoked in whole or in part and additional provisions added at any time by a written amendment recorded in the office of the Clerk and Recorder of Yellowstone County, Montana, duly signed and acknowledged by the owners of record of not less than 75% of the lots subject to this Declaration. Notwithstanding the foregoing, so long as Mont Vista, LLC owns any Lot subject to this Declaration, then the consent of Mont Vista, LLC shall be required before these Covenants may be altered or amended, or new covenants are added; such consent shall be

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considered in the calculation and determination of the 75% minimum consent requirement.

Mont Vista, LLC shall also have the right to amend these Covenants and the attached Bylaws without consent of any other owner, or any Lender, and to add additional improvements to the Lots subject to this Declaration, to be maintained by all homeowners.

10. MISCELLANEOUS.

- a. Severability. Invalidation of any one of these Covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
- b. Covenants Run With The Land. The covenants herein set forth shall run with the land and bind the undersigned lot owner and its devisees, trustees, successors and assigns; the undersigned lot owner and any and all parties claiming by, through, or under it shall be taken to hold, agree, and covenant with the owners of all of the lots, their heirs, devisees, trustees, successors and assigns, and with each of the owners of said lots, to conform to and observe said Covenants.
- c. Waiver. The failure of any lot owner, or the Association, to enforce these Covenants at the time of any violation thereof shall not be construed as a waiver of the right to do so

DATED this 8th day of July, 2014.

MONT VISTA, LLC, Owner & Developer

By: 
Tracy A. Haag, Member

STATE OF MONTANA)
 : ss.
County of Yellowstone)

This instrument was acknowledged before me on July 8th,
2014, by TRACY A. HAAG, a Member of MONT VISTA, LLC, Owner &
Developer.

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STATE OF MONTANA)
) Ss.
County of Yellowstone)

This instrument was acknowledged before me on July 8th,
2014, by ANNE BIRAC, TRACY A. HAAG, member of MONT VISTA, LLC
Anne Marie Birac

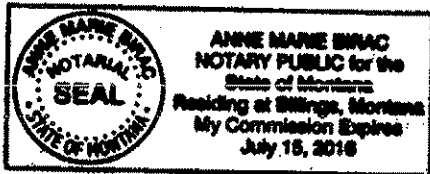
Printed Name: ANNE MARIE BIRAC

SEAL

Notary Public for the State of Montana

Residing at: Billings, MT

My Commission Expires, 2016





BYLAWS OF MONT VISTA
HOMEOWNERS ASSOCIATION, INC.
(a non-profit corporation)

EXHIBIT A

The Board of Directors of Mont Vista Homeowners Association, Inc., a Montana non-profit corporation, hereafter referred to as "this Association", hereby adopts the following Bylaws:

OFFICES

1. **Principal office.** The principal office of this Association is situated at 2680 Overland Ave. Suite Billings, Montana 59102, The Board of Directors may change the location of the principal office.

MEETINGS OF MEMBERS

2. **Annual Meeting.** The annual meeting of the members for election of Directors, approval of an annual budget, and the transaction of such other business as may properly come before them shall be held in Billings, Montana, at the location set forth in the Notice of Meeting. The annual meeting shall be held in November of each year at a time and a date to be determined by the Board of Directors.

3. **Notice of Annual Meeting.** The Secretary-Treasurer of this Association shall give written notice stating the place, day and hour of the meeting by delivering the same not less than ten days prior to the date of the meeting, if notice is personally delivered, or not less than 30 days, nor more than 50 days before the date of the meeting, if notice is delivered by mail, to each member of record entitled to vote at such meeting. The notice shall be deemed delivered when deposited in the United States mail addressed to the member at the member's address as it appears on records of this Association with postage prepaid thereon.

4. **Special Meeting.** Special meetings of the Members may be called by the Board of Directors or by not less than 40% of all the members entitled to vote at the meeting. Notice of said special meeting shall be given in the same manner as notice for the annual meeting as outlined in Section 3 above; provided, that the notice, in addition to all other requirements, must state the purpose or purposes for which the meeting is called. No business other than that specified in the Notice of Meeting shall be transacted at any such special meeting.

5. **Quorum of Members.** A one-third of the Members in each class entitled to vote and represented in person or by proxy shall constitute a quorum at a meeting of Members. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. If a quorum is present, the affirmative vote of the majority of members represented at the meeting and entitled to vote on the subject matter shall be the act of the members unless the vote of a greater number is required by the Articles of Incorporation or these Bylaws.

If a meeting cannot be organized because a quorum is not present, those present may adjourn the meeting from time to time until a quorum is present at which time



any business may be transacted that could have been transacted at the meeting as originally called.

6. **Voting.** Membership shall be determined as of the date the Notice of Meeting is mailed. Each Class "D" Member shall have one equal vote per Lot for each Lot owned by it. Class "A" Members shall have one equal vote per Lot for each Lot owned by the Member. For voting purposes, co-owners of a single lot shall be considered to be a single member, with one vote for that lot. A member may vote either in person or by proxy properly executed.

7. **Proxies.** Every proxy must be dated and signed by the member and given to the Secretary-Treasurer before or at the time of the meeting. No proxy shall be valid after the expiration of 11 months from the date of its execution. Every proxy shall be revocable by the member executing it.

8. **Order of Business.** The order of business at all meetings of the members shall be as follows:

- a. Proof of notice of meeting or waiver of notice.
- b. Reading of minutes of preceding meeting.
- c. Reports.
- d. Business.

9. **Informal Action.** Resolutions required or permitted to be approved by members may be approved without a meeting of members if the written resolution is signed by at least 51% of the members entitled to vote, and filed with the corporate records.

BOARD OF DIRECTORS

10. **Number of Directors.** This Association shall be governed by a board of five Members. The Directors shall be elected by class vote so long as there are two classes of membership. Until initial sale of all Lots by Developer, Class "A" Members shall elect two Directors and Class "D" Members shall elect three Directors. After sale of all Lots by Developer, all Directors shall be elected by the Class "A" Members.

11. **Election and Term of Office.** The Directors shall be elected at the annual meetings of the Association. Two directors shall be elected by the Class "A" Members at the first annual meeting of the Association for a one year term, and three Directors shall be elected for a two year term of office by the Class "D" Membership. Thereafter, the term of office of each Director shall be for two years. If a quorum cannot be obtained for an annual meeting, the existing Directors shall continue to serve until the next annual or special meeting is held and new Directors are elected, or as an alternative, the existing Directors may contact members to determine who is willing to serve as a Director, and deliver a written ballot to all Members of the Class entitled to vote. The ballot shall contain the names of all owners willing to serve for the term (s) to be filled. A Director may be re-elected to successive terms.

12. **Nomination and Election.** Candidates for Directors shall be nominated from the floor at each annual meeting. Each Member of a class shall be entitled to one vote per lot owned for each vacancy in the Board of Directors to be elected by that class; cumulative voting shall not be permitted. The candidates receiving the largest



number of votes from the members entitled to vote shall serve as Directors for the following term.

13. **Initial Directors.** Until the first annual meeting, DAVID DORN, PRESTON LEES and TRACY HAAG shall serve as Directors and Officers.

14. **Powers and Duties of Directors.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of this Association, including the following:

- a. To determine when and what maintenance is needed for the improvements described in the original Declaration of Covenants for Mont Vista Subdivision, or its subsequent amendments and such other maintenance as may be authorized by vote of 75% of the Members entitled to vote .
- b. To levy and collect regular assessments and special assessments for the purposes set forth in the Declaration of Covenants for Mont Vista Subdivision.
- c. To prepare an annual budget and obtain contractors' bids for repair and maintenance of the improvements described in the Declaration of Covenants for Mont Vista Subdivision.
- d. To take appropriate legal action to collect delinquent assessments, to file a lien against any home having delinquent assessments, and to levy approved late fees and interest.
- e. To enter into and carry out contracts as necessary to its duties herein.
- f. To establish into and carry out contracts as necessary to its duties herein.
- g. To establish a bank account for this Association and to keep records in accordance with common accounting procedures.
- h. To elect and remove officers of this Association and to employ and pay a Secretary-Treasurer.
- i. To enforce the provisions of the Declaration of Covenants for Trails West Subdivision and these Bylaws by appropriate action.
- j. To send written notice of any change in the regular assessments and written notice of any special assessment to each owner at least 30 days before its due date
- k. To adopt a schedule of late payment fees, with consent of 75% of the members entitled to vote.
- l. To procure and maintain insurance required or authorized to be purchased by the Association.
- m. To pay all debts of the Association.
- n. To file annual corporate reports with the Montana Secretary of State and to pay the required fee.



- o. To prepare income tax returns for the Association, if required by state or federal law, and to pay all taxes owed.
- p. To provide any notices required by these Bylaws.
- q. In its discretion, to delegate any of the above-mentioned powers and duties to one or more officers or employees of the Association or to an independent contractor or agent.
- r. To supervise all officers, agents, and employees of the Association to ensure that they properly perform their duties.

15. **Resignation and Removal of Directors.** Any Director may be removed from office by the majority vote of the unit owners of the class electing the Director. In the event of resignation or removal of a Director, the vacancy shall be filled at a special meeting of the Members of the class which elect that Director, or by written ballot circulated among the Members of that class, in the manner provided for the election of Directors, with the person so elected serving the balance of the unexpired term.

16. **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least one such meeting shall be held during each calendar year. Notice of such regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone, facsimile or e-mail, at least three days prior to the date of such meeting. If notice is given by e-mail, the Association shall maintain a record of all e-mails sent.

17. **Special Meetings.** Special meetings of the Board of Directors may be called by the President on ten days' notice to each Director, given personally or by mail, telephone, facsimile or e-mail, which notice shall state the time, date, place and purpose of the meeting.

18. **Quorum.** A quorum of the Board for transaction of business at any meeting shall be a majority of the Directors.

19. **Proxies.** Only Directors will be allowed an official vote at Directors' meetings. No Director may authorize another person to act on the Director's behalf at Directors' Meetings.

20. **Telephone Meetings.** Directors may have telephone meetings so long as all Directors are present or are given the opportunity to be present, and so long as each Director is able to speak to and be heard by the others.

OFFICERS

21. **Designation.** The officers of this Association shall be a President, a Vice-President and a Secretary-Treasurer.

22. **Election and Term of Officers.** The officers shall be elected by the Board of Directors, and shall continue in office at the pleasure of the Board. The Board may elect themselves as Officers. The President and Vice President shall be members of this Association; the Secretary-Treasurer need not be a member of this Association.

23. **Payment of Officers.** The President and Vice-President shall serve



without salary; the Secretary-Treasurer may be paid a reasonable salary, as determined by the Board.

24. **Removal of Officers.** Any officer may be removed at any time by vote of a majority of the Directors then in office.

25. **Filling Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, shall be filled by the Board of Directors.

26. **President.** The President shall be the chief executive officer of this Association and shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the affairs of this Association. The President shall preside at all meetings of the Board of Directors and of the members.

27. **Vice-President.** In the absence or disability of the President, the Vice-President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to, all the restrictions upon the President.

28. **Secretary-Treasurer.** The Secretary-Treasurer shall keep the minutes of every meeting held and conduct such correspondence as the Board deems necessary. The Secretary-Treasurer shall have the care and custody of and be responsible for all funds and securities of this Association and shall deposit such funds and securities in the name of this Association in such bank or other depository as the Board of Directors may designate. The Secretary-Treasurer shall have authority to pay out and dispose of all orders for payment of money under the direction of the President or the Board of Directors. The Secretary-Treasurer shall keep accurate books of account of all its business and transactions and shall at all reasonable hours, with reasonable advance notice, exhibit books and accounts to any Director or Member of this Association. The records of the Association shall be kept at the principal office of the Association. The Secretary-Treasurer shall provide a copy of any corporate documents to a member upon request; the cost of copying shall be paid by the requesting member. The Secretary-Treasurer shall render a report of the condition of the finances of this Association at each regular meeting of the Board of Directors and regular meeting of members, and shall perform all duties incident to the office of Secretary-Treasurer.

CONTRACTS, CHECKS, DEPOSITS AND FUNDS

29. **Contracts and Instruments.** The President or Vice-President shall sign all contracts and instruments on behalf of this Association, after authorization has been granted and approval obtained from a majority of the Board of Directors.

30. **Checks and Drafts.** All checks, drafts, or other orders for payment of money, notes, or other evidence of indebtedness, issued in the name of or payable to this Association, shall be signed or endorsed by any two of the officers of the Association.

31. **Depository.** All funds of this Association shall be deposited from time to time to the credit of this Association in such banks, or other depositories as the Board of Directors may select.

MISCELLANEOUS PROVISIONS

32. **Waiver of Notice.** Whenever any notice is required to be given under the

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provisions of law or under the provisions of the Articles of Incorporation or the Bylaws of this Association, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

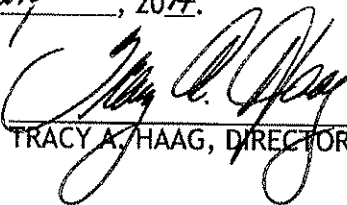
33. Amendment of Bylaws. The provisions of these Bylaws may be altered or amended by affirmative vote of 75 of the member s entitled to vote in Class "A" and 75% of the Member s entitled to vote in Class "D".

34. Expulsion of Members. Members may not be expelled from this Association and their voting rights cannot be canceled so long as the Member owns any of the Lots. No member may withdraw from this Association so long as that member owns a lot.

35. Reimbursement of Costs and Expenses. All Officers and Directors shall be reimbursed their costs and expenses directly incurred in work performed in furthering the purposes of this Association.

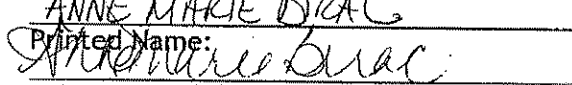
36. Dissolution. This Association may be dissolved only if maintenance and repair of all of the subdivision improvements and ownership of the detention pond lot and entry park lots is assumed by some other entity. In the event of dissolution of this Association, the funds of this Association shall be divided equally among its members, after all payments of debts of this Association.

BYLAWS DATED 8th of July, 2014.


TRACY A. HAAG, DIRECTOR

STATE OF MONTANA)
) ss.
County of Yellowstone)

This instrument was acknowledged before me on July 8th, 2014, by TRACY HAAG, a Director of Mont Vista Homeowners Association, Inc.

ANNE MARIE BRAC
Printed Name:

Notary Public for the State of Montana
Residing at: Billings, MT
My Commission Expires, 2016

SEAL

