

RES**3718773**09/24/2014 09:29 AM Pages: 1 of 9 Fees: 63.00
Jeff Martin Clerk & Recorder, Yellowstone MT

Return to:
Sanderson Stewart
1300 North Transtech Way
Billings, MT 59101

DECLARATION OF RESTRICTIONS

THE ESTATES AT BRIARWOOD SUBDIVISION, SECOND FILING

THIS DECLARATION, made this 22nd day of September, 2014, by **THE ESTATES OF BRIARWOOD, LLC**, with its principal office in Billings, Yellowstone County, Montana, **WAYNE A. BIBERDORF AND JEAN M. BIBERDORF**, of 421 22nd East, Williston ND 58801, and **DUANE WARE AND SANDY WARE**, of 543 Mecca Drive, Billings, MT 59105, (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, the undersigned are the owners of all of the lots in The Estates at Briarwood Subdivision, Second Filing; and

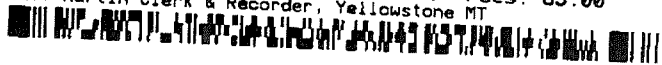
WHEREAS, the above-described property is being developed pursuant to that certain Subdivision Improvements Agreement dated July 28, 2014 (the "SIA"), between Declarant and the City of Billings, Montana; and

WHEREAS, the aforesaid owners desire to place building and use restrictions on all of the lots within said Subdivision for the use and benefit of the present and future owners of any of said lots.

NOW, THEREFORE, in consideration of the premises, the undersigned hereby establish and declare the following building restrictions and protective covenants which shall be applicable to all the hereinafter described real estate.

I. PERSONS BOUND BY THE COVENANTS AND RESTRICTIONS

All persons, corporations, partnerships, associations, or other entities who shall hereafter acquire any interest in and to the real estate described herein, or any part thereof, shall be taken and held to agree and covenant with the owners of the lots



and with their heirs, devisees, trustees, and assigns, to conform to and observe the following Covenants and Restrictions as to the use thereof, and the construction of residences and improvements thereon.

II. REAL ESTATE TO WHICH COVENANTS APPLY

These Covenants and Restrictions shall apply to the following described lots and blocks in The Estates at Briarwood Subdivision, Second Filing (the "Subdivision"):

Lots 4 through 22 inclusive in Block 3, and Lots 26 through 31 inclusive, in Block 4; all in The Estates at Briarwood Subdivision, Second 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 (25 lots total).

III. BUILDING AND USE RESTRICTIONS

Each lot in the above-described Subdivision shall be known and described as a residential lot. None of the said lots may be used or improved for other than private residential purposes and no structure shall be erected, altered, placed, or permitted to remain on any residential lot other than one single-family dwelling with a private attached or semi-attached garage or carport.

No building or other structures shall be located on any lot less than 25 feet from the front lot line, nor shall any building or other structure be located less than 10 feet from the side lot line or less than 20 feet from the rear lot line, but the side lot line shall be considered the outer property line when the structure encompasses more than one lot.

The ground floor or main floor minimum living area of all ranch-style dwellings erected on the lots, exclusive of open porches, breezeways, and garages, shall contain not less than 1,900 square feet (without basement) or 1,600 square feet (with full basement). Two-story dwellings exclusive of open porches, breezeways, and garages, with a minimum of 1,800 square feet of total finished living area above ground level. Tri-level dwellings shall contain not less than 1,650 square feet of living area on the upper two levels, exclusive of open porches, breezeways, and garages, with a minimum of 2,300 square feet of livable area.

No lot shall be subdivided, resubdivided, split, altered, or reduced in size in any way or manner whatsoever. The foregoing shall not prohibit an adjustment or relocation of common boundary lines between two or more of said lots, provided



that, (i) no additional tracts or lots are created in connection therewith; and, (ii) each such tract or lot affected by such adjustment or relocation has an area (in square feet) equal to at least 90 percent of the area contained in such tract or lot as set forth and depicted on the original plat of The Estates at Briarwood Subdivision, Second Filing.

Lot aggregations shall also be allowed such that the net result is a reduction in total number of lots, and that no resulting lot of said aggregation has an area less than any of the affected lot areas prior to said aggregation.

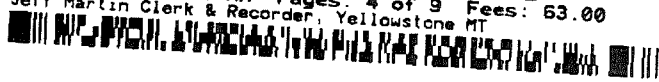
No building of any kind shall be moved upon said premises, and all buildings or residences erected on said lots shall be new construction. Storage or detached buildings shall be of the same exterior materials and finishes as the residence and shall be no higher than 25 feet or the height of the residence, whichever is less. No log homes or homes with log siding shall be allowed. No modular homes shall be allowed. All homes must be constructed with a two stalls or larger garage.

None of the above-described property or any buildings erected thereon shall at any time be used for purposes of any trade or for any commercial, professional, or manufacturing business of any description, and no noxious or offensive activities shall be carried on, nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood. No hospital, church, duplex, or apartment house shall be erected on said lots. This provision shall prohibit the construction of a multi-family dwelling of the condominium type.

Nothing in this paragraph or in the Declaration shall be deemed to preclude the use of a portion of any building or residence erected on a lot as a home office, provided that such use complies in all respects with the definitions, restrictions, and requirements for a "home occupation" in a residential district under the City Zoning Ordinance for the City of Billings, Montana, as the same may be amended from time to time.

No trailer, mobile home, motor home, basement, tent, shack, garage, or barn on the lots shall at any time be used as a residence, temporarily, or permanently.

No dogs or pets shall be raised, kept, or cared for on a commercial basis and no swine, poultry, goats, horses, or other livestock (including chickens) shall be permitted upon said premises. Any person who shall keep, feed, harbor, suffer, or allow staying about the premises occupied or controlled by him within the Subdivision a dog at large or insecurely confined, is guilty of maintaining a public nuisance.

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No fence, living hedge, or wall of any kind shall be created or placed on the front or side of the front yard setback area of any lot. No hedges or fences may be planted or constructed within a side yard or back yard adjacent to the golf course.

All persons purchasing lots that border the Briarwood Golf Course or are immediately across the street from the Briarwood Golf Course do so with notice that due to the proximity of the golf course, golf balls may enter upon the lots and persons playing golf and otherwise associated with golf being played may enter upon the property to the extent that it is necessary to retrieve or remove golf balls from yard areas only, and purchasers, their heirs, successors, and assigns, expressly agree that such use of the property 15 foot distance from the dwelling will be permitted. No hedges or fences may be planted or constructed within a side yard or backyard adjacent to the golf course except for hedges or fences used as privacy screens for patios and doorways. Otherwise, it is understood that the foregoing specified right of use does not in any way infringe upon or interfere with the said owner's right to build, landscape or otherwise improve the property as contemplated by these covenants and restrictions and applicable zoning ordinances.

No signs, billboards, posters, or advertising devices of any kind or character shall be erected or displayed upon any of the lots, except signs displayed to identify the occupants of a dwelling, sale or resale signs, which shall not exceed 30 square feet in area.

Off-street covered parking shall be provided on each lot for all vehicles kept upon the premises. No street or other open areas shall be used for the purpose of dismantling or repair of vehicles, and only motor-driven vehicles capable of being moved under their own power may be parked upon said streets for a maximum of 30 days. Unregistered or inoperable vehicles must be parked in an enclosed garage.

No trailer, boat, camper, motor home, vehicle, or other equipment generally associated with recreation or leisure time activities shall be situated on or parked on any lots for more than seven consecutive days in any calendar year unless parked on a concrete slab next to the house.

No structure on any lot may be used for dwelling purposes until after its area, as defined by the foundations, has been substantially completed, including interior and exterior finishes, and until sanitary facilities and utilities shall have been permanently installed.

No excavations, except such as are necessary for the construction of improvements, shall be permitted on any lot until such time as the actual



construction of the house is to begin, except that the owner may test the supply of the water under said land and may drill and excavate for those purposes, as well as testing for subsoil conditions, or planting of trees and shrubs.

All garbage shall be kept within building enclosures or recessed in the ground. The burning of garbage and trash in incinerators or barrels is prohibited.

Any and all utilities which shall serve the said lands or lots, as now located or to be located thereon, shall be underground, extending to and including the distribution system, together with the residential and any and all service connections, with the exception of temporary new construction power services.

Basketball boards must be supported on a separate post and be of manufactured quality. No homemade boards will be allowed.

Above ground swimming pools will not be permitted with the exception of children's wading pools.

No permanent clothesline posts will be erected on any of said lots. Any clothesline posts must be of the removable type.

Television or communication towers or structures shall not extend in excess of three feet above the building or roofline.

An Architectural Control Committee shall be formed at the time of filing of the Subdivision plat. Said committee shall be composed of Jim Kisling, as owner of Estates of Briarwood, LLC.

In the event of the death or resignation of any member or members of the committee, the remaining committee members shall have full authority to designate a successor or successors. Members of the committee shall not be entitled to any compensation for services performed pursuant to the duties outlined herein.

All construction plans for structures to be erected within the Subdivision shall be submitted by the lot owner or his/her representative to the Architectural Control Committee for review and approval or disapproval as relating to the conformance of said plans to the intent of these restrictions.

The Architectural Control Committee's approval or disapproval as required herein shall be in writing. In the event the Committee fails to approve or disapprove within 30 days after plans and specifications have been submitted to it in writing, or in any event, if no suit to enjoin the construction has been commenced prior to



the completion thereof, approval will not be required and the related requirements outlined herein shall be deemed to have been fully complied with.

Approval or disapproval of plans and specifications shall be by simple majority vote of the Architectural Control Committee.

IV. **DURATION**

These Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 30 years from the date the Covenants and Restrictions are recorded, after which time said Covenants and Restrictions shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said Covenants and Restrictions in whole or in part. Invalidity of any one of these Covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

V. **RIGHT TO ENFORCE**

The Covenants and Restrictions herein set forth shall run with the land and bind present owners, their heirs, devisees, trustees, and assigns, and any and all other parties claiming by, through, or under them, shall be taken to hold, agree, and covenant with the owners of said lots, their heirs, devisees, trustees, and assigns, and with each of the owners of said lots, to conform to and observe said Covenants and Restrictions as to the use of said lots and the construction of improvements thereon; but no covenants or restrictions herein set forth shall be personally binding upon any person or persons, corporation, partnership, association, or other entity, except in respect to breach which is committed during its, his, or their seizing of, or title to said land; and the owner or owners of any of the above lands shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of the covenants and restrictions above set forth, in addition to ordinary legal action for damages; and the failure of the present owners, or the owner or owners of any lot to enforce the covenants and restrictions herein set forth at the time of any violation thereof, shall be in no event deemed as a waiver to the right to do so. In the event of any legal action to enforce this Declaration or to prevent a breach of the terms and conditions hereof, the prevailing party in such action shall be entitled to recover costs and fees, including reasonable attorney's fees.

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VI. AMENDMENTS

The above Covenants and Restrictions may be altered or amended at any time upon the placing of record at the office of the County Clerk and Recorder of Yellowstone County, Montana, of an instrument showing the written consent thereto by the owners of at least 60 percent of the above-described lots. Notwithstanding the foregoing sentence, so long as Declarant owns at least 20 percent of the lots in The Estates at Briarwood Subdivision, Second Filing, then the consent of Declarant shall be required before these Covenants and Restrictions may be altered or amended, but such consent may be considered in the calculation and determination of the said 60 percent minimum consent requirement.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written.

"DECLARANT"

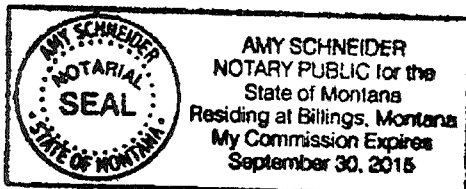
ESTATES OF BRIARWOOD, LLC

By: [Signature]
Jim Kislring

Its: Member

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this 9th day of September, 2014, before me, a Notary Public in and for the State of Montana, personally appeared JIM KISLING, known to me to be the member of ESTATES OF BRIARWOOD, LLC the persons who signed the foregoing instrument and who acknowledged to me that said corporation executed the same. Witness my hand and seal the day and year herein above written.



Amy Schneider
Notary Public in and for the State of Montana
Printed name: _____
Residing in Billings, Montana
My commission expires: _____

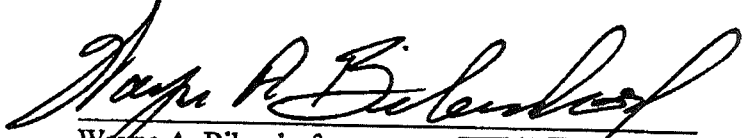
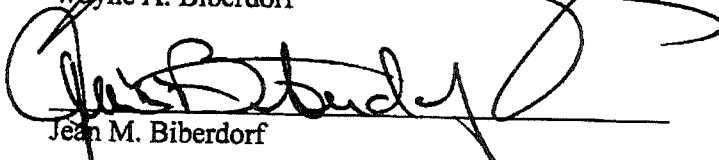
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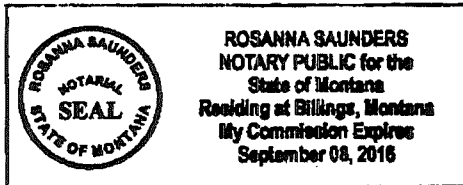


"DECLARANT"


Wayne A. Biberdorf

Jean M. Biberdorf

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this 22nd day of September, 2014, before me, a Notary Public in and for the State of Montana, personally appeared WAYNE A. BIBERDORF AND JEAN M. BIBERDORF, known to me to be the persons who signed the foregoing instrument and who acknowledged to me that they executed the same. Witness my hand and seal the day and year herein above written.




Notary Public in and for the State of Montana
Printed name: Rosanna Saunders
Residing in Billings, Montana
My commission expires: September 8, 2016

RES

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"DECLARANT"

Duane Ware

Duane Ware

Sandy Ware

Sandy Ware

STATE OF MONTANA)

: ss.

County of Yellowstone)

On this 18 day of September, 2014, before me, a Notary Public in and for the State of Montana, personally appeared DUANE WARE AND SANDY WARE, known to me to be the persons who signed the foregoing instrument and who acknowledged to me that they executed the same. Witness my hand and seal the day and year herein above written.

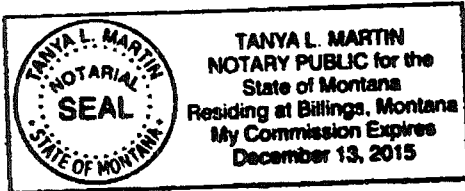
Tanya L. Martin

Notary Public in and for the State of Montana

Printed name: Tanya L. Martin

Residing in Billings, Montana

My commission expires: 12/13/2015
TLM



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Jeff Martin Clerk & Recorder, Yellowstone MT

Return to:
Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

**SUBDIVISION IMPROVEMENTS AGREEMENT
THE ESTATES AT BRIARWOOD SUBDIVISION,
SECOND FILING
CITY OF BILLINGS
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1300 North Transtech Way
Billings, MT 59102

**SUBDIVISION IMPROVEMENTS AGREEMENT
THE ESTATES AT BRIARWOOD SUBDIVISION,
SECOND FILING**

THIS AGREEMENT is made and entered into this 28th day of July, 2014, by and between **MAX E. THORNTON, KATHERINE K. THORNTON TESTAMENTARY TRUST**, and **PM & M, LLC**, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the preliminary plat of The Estates at Briarwood Subdivision, Second Filing, located in the City of Billings, Yellowstone County, Montana, was submitted to the Planning and Community Services Department which recommended its approval to the Yellowstone County Board of Planning; and

WHEREAS, at a meeting held on the 28th day of January, 2014, by the Yellowstone County Board of Planning, the Board recommended for approval, subject to certain conditions, an area known as The Estates at Briarwood Subdivision, Second Filing, and

WHEREAS, at a regular meeting held on the 24th day of February, 2014, the City Council approved, subject to certain conditions, a preliminary plat of The Estates at Briarwood Subdivision, Second Filing, and

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

WHEREAS, the provisions of this agreement shall be effective and applicable to the plat of The Estates at Briarwood Subdivision, Second Filing, upon 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

Subdivider requests no variances.

II. CONDITIONS THAT RUN WITH THE LAND

- A. Lot owners should be aware that this subdivision could contain wildlife migratory routes. Consequently, owners are advised that wildlife indigenous to this area could be found on the property and may impact the developed property and interface with domestic animals, residents, and visitors. Owners may also experience problems with damage to landscaped shrubs, flowers, and gardens. Any impacts associated with wildlife and any damage arising therefrom is the responsibility of the lot owners.
- B. Lot owners will be required to construct that segment of the required five-foot wide boulevard-style sidewalk that fronts their property at the time of lot development.
- C. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the geotechnical investigation report for this property, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical investigation prior to construction. Assessment and mitigation, if any, of these conditions shall be the responsibility of the lot owner.

A copy of the entire geotechnical report is available for review at the City Building and/or Planning Division offices.

- D. Lot owners should be aware that the United States Postal Service mail delivery will be made only to centralized delivery locations. Such locations shall consist of from 8 to 16 mailboxes per location. The location of each centralized mailbox setting is shown on the overall development plan and the private contract construction plans. Subdivider shall install the mailboxes within the private contract for The Estates at Briarwood Subdivision, Second Filing.

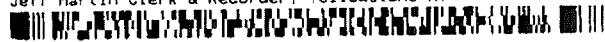


- E. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts, which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be 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. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for any construction on lots. Best Management Practices are defined within Section 28-401, BMCC and detailed in the Billings Stormwater Management Manual.
- G. The developer and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and State Department of Environmental Quality (DEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by DEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.
- H. Lot owners should be aware that the installation of an E-one grinder pump (or hydraulically comparable grinder pump) could be required at the time of lot development. Lot owners should also be aware that if a grinder pump is required that the periodic maintenance and replacement of the grinder pumps is the responsibility of the lot owner.

III. TRANSPORTATION

A. Streets

1. Glengarry Lane is designated as a local street and is currently located within a 50-foot right-of-way. As part of the improvements for this subdivision, Glengarry Lane will be transitioned to a 56-foot right-of-way. Glengarry Lane will be constructed with a standard width of 34 feet, measured from back of curb to back of curb. Glengarry Lane shall be constructed with standard curb and gutter to Ben Nevis Road. North of Ben Nevis Road the curb and gutter will transition to ribbon curb and gutter and road side ditches. City and Subdivider agree that Glengarry



Lane shall be built with curb and gutter and adequate base course and asphalt sections. All streets shall be built in accordance with the City of Billings site development ordinance, Subdivision Regulations, and Uniform Building Code.

2. Ben Nevis Road is designated as a local street and will be located within a 56-foot right-of-way. Ben Nevis Road will be constructed with a standard width of 34 feet, measured from back of curb to back of curb. City and Subdivider agree that Ben Nevis Road shall be built with curb and gutter and adequate base course and asphalt sections. All streets shall be built in accordance with the City of Billings site development ordinance, Subdivision Regulations, and Uniform Building Code.

B. Sidewalks

City and Subdivider agree that developer will install handicap accessibility ramps at time of private contract construction. Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction.

Sidewalks shall be five-foot wide with five-foot wide boulevards along the streets frontages of Lots 4 through 10, inclusive, Block 3; Lot 22, Block 3 and Lots 26 through 31, inclusive, Block 4.

Sidewalks shall be five-foot wide with 9-foot boulevards along the street frontages of Lots 11 through 15, inclusive, Block 3 and Lot 18 through 21, inclusive, Block 3. A 4-foot wide sidewalk easement will be created along the Glengarry Lane frontage for Lots 11 through 15, inclusive, Block 3 and Lots 18 through 22, inclusive, Block 3.

C. Street Lighting

Construction or installation of street lights shall not be required at this time; provided, however, that in the contract for the street improvements required hereunder, the Subdivider shall include conduits at street crossings at the time of street and sidewalk construction to accommodate the future wiring of street lights for the development. If street lights are installed, a street light maintenance district will be formed for the entire subdivision to accommodate maintenance of the street lights.

**D. Traffic Control Devices**

The Subdivider shall furnish and install all necessary traffic control devices adjacent to the subdivision. Traffic control devices shall include all necessary signing, striping, and channelization devices to properly complete the implementation of the proposed street construction. All traffic control devices shall be subject to review and approval by the City engineering office.

E. Access

1. Access to the subdivision from Glengarry Lane and Ben Nevis Road. Location of these accesses shall be subject to review and approval by the City Engineering office.
2. To provide a second means of access in the event of emergencies, the Subdivider shall construct a permanent 20-foot wide emergency access road that shall connect the subdivision to Colleen Drive. The emergency access road within the subdivision shall be located within a 30-foot wide easement. The emergency access road will be located in a 20-foot wide easement through the Briarwood Golf Course and in 120-foot wide and 60-foot wide easement from the Briarwood Golf Course to Colleen Drive. The emergency access road shall be completed prior to final plat approval.
3. The subdivision's traffic improvements shall be in accordance with the recommendations from a previous Traffic Accessibility Study for the Estates at Briarwood, performed in March of 2004.

F. Billings Area Bikeway and Trail Master Plan

The Billings Area Bikeway and Trail Master Plan recommends a proposed multi-use trail through Briarwood Subdivision. The alignment of the multi-use trail has not been determined at this time. City and Subdivider agree that no multi-use trail improvements will be constructed as part of the requirements for this plat.

G. Public Transit

There are no MET Transit routes that service this subdivision at this time. No improvements with regard to MET Transit vehicles are anticipated at this time.



IV. EMERGENCY SERVICES

Access is provided to this subdivision from Glengarry Lane. Also, access is provided to the subdivision from an emergency access road located off Colleen Drive. In addition, fire hydrants will be installed at the required locations as reviewed and approved by the City of Billings Fire Department.

The emergency secondary access road shall be constructed to the standards as found in Section 23-413 C of the City of Billings Subdivision Regulations. At a minimum, the following is required:

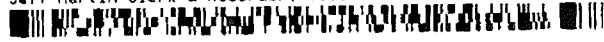
- Emergency access roads shall be designed to a minimum unobstructed surface width of not less than twenty feet.
- Shall be constructed to adequately support a forty ton vehicle in all weather conditions.
- Where required by the Fire Department, gates or other approved barricades shall be required at either end of the road to restrict through traffic. An "Emergency Access Only" sign shall be fixed to each gate in a conspicuous manner.

A new maintenance district for the perpetual maintenance of the emergency access road connecting Glengarry Lane with Colleen Drive shall be created. The district shall include lots in The Estates at Briarwood Subdivision, First and Second Filings.

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 the 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-feet 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.

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

V. STORM DRAINAGE

All storm drainage improvements shall comply with the provisions of Chapter 28, BMCC, and shall be in accordance with the recommendations of an approved storm drain study to be submitted to the City of Billings Engineering department by the Subdivider. Because the City of Billings storm drain system is not available in the area of the subdivision, stormwater will be handled on site through surface flow on the streets and ditches, inlets, and piping.

The stormwater from just north of Ben Nevis Road will drain to the south to the existing stormwater detention pond near McMasters Road. This existing pond has an outfall to the Briarwood Golf Course. This area of the Estates at Briarwood Subdivision, Second Filing has been accounted for with a previous stormwater analysis. The northern portion of Glengarry Lane will be directed to inlets with roadside ditches and will discharge to the east to the storm drain easements and ultimately to the existing drainage. Storage for the northern portion of Glengarry Lane will be provided in the ditches above the inlets, in the stormwater piping and in the inlet structures.

VI. UTILITIES

Water and sanitary sewer lines shall be sized and installed in conformance with the City design standards and specifications, and the rules and regulations of the City of Billings.

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/to water mains and sanitary sewers to the Public Works Department, Engineering Division. The extension/connection of/to water mains and sanitary sewers are 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 developer/owner acknowledges that the subdivision shall be subject to the applicable system development fees and franchise fee 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 and regulations of, and as approved by, the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality.

A. Water

Service to the subdivision will be provided by extending the existing water main stub in Glengarry Lane. Appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. It is anticipated that each lot shall be provided with its own separate water service. All water construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality, and will be approved by the Public Works Department.

B. Sanitary Sewer

The subdivision will be served by extending the existing eight-inch sanitary sewer main located in Glengarry Lane. The sanitary sewer located within the subdivision will consist of an eight-inch sanitary sewer main until the existing terrain near the north end of Glengarry prevent the use of gravity sewer. At that point the sanitary sewer will be provided through low-pressure sanitary sewer mains. Both the gravity sewer and the low-pressure sanitary sewer will have appropriately sized mains and services in the internal streets will provide service to the individual lots within the subdivision. It is anticipated that each lot that requires low-pressure sanitary sewer shall be provided with its own separate low-pressure sanitary sewer service and each lot will need to use an E-one grinder pump (or hydraulically comparable grinder pump). All sanitary sewer construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality, and will be approved by the Public Works Department, Distribution, and Collection Division.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines shall be placed in designated easements outside of the right-of-way and shall be



installed underground prior to surface improvements. The location of all such facilities shall be subject to approval of the City Engineer.

VII. PARKS/OPEN SPACE

Section 76-3-621 of the Montana Code Annotated covers the park dedication requirement. Additionally, Section 23-1002.B.1 of the City of Billings Subdivision Regulations covers parkland dedication requirements for major subdivisions. The Subdivider and City agree that this parkland dedication will be met through a cash-in-lieu payment. City and Subdivider agree the cash payment in lieu of parkland dedication shall be made prior to final plat approval, based on the criteria found in Section 23-1006, BMCC.

VIII. SOILS/GEOTECHNICAL STUDY

The Subdivider has performed a geotechnical analysis for this property. This geotechnical analysis will include all items as shown in Appendix F(6) in the City of Billings subdivision regulations.

Recommendations from the report include:

1. Approximately six inches of surface soils should be stripped and removed from the site or stockpiled for use in non-structural areas.
2. It is anticipated that site and lot grading can be accomplished using conventional earthmoving equipment. However, hard zones of bedrock may be encountered that may require large excavation equipment to remove.
3. Fill with on-site material should be placed and compacted to a minimum of 95 percent relative compaction in accordance with the ASTM D698 compaction test method.
4. Provide positive drainage away from all residences.
5. Street subgrade outside of utility trenches should be placed at 95 percent of ASTM D698 and utility trench backfill should be placed at 97 percent of ASTM D698.
6. The street section for the property shall include four inches of asphaltic concrete over a six-inch base course.



7. The potential for sulfate attack from existing soils appears to be severe. As a result, Type V Portland cement with a pozzolan should be specified for all project concrete laced on and below grade.
8. There is the potential for the presence of slightly to moderately expansive claystone bedrock. Expansive bedrock has a history of distress-related damage to residential homes.
9. The geotechnical investigation details three different options for foundation design. They include Drilled Piers, Helical Piers and Spread Footings. It is recommended that a more comprehensive geotechnical study be completed prior to installing foundations so lot-specific site conditions can be determined.

IX. FINANCIAL GUARANTEES

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 Engineering Department and Public Works Department.

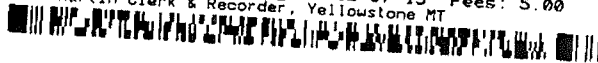
X. LEGAL PROVISIONS

- 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 provision of the 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 giving notice shall be entitled to reasonable attorney fees and costs.

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Jeff Martin Clerk & Recorder, Yellowstone MT



- 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 have set their hands and seals the day and year first above written.

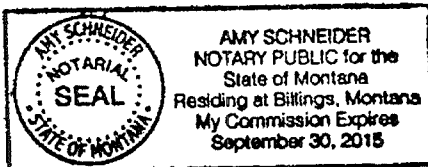
"SUBDIVIDER"

By: Max E. Thornton
MAX E. THORNTON

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this 7th day of July, 2014, before me, a Notary Public in and for the State of Montana, personally appeared Max E. Thornton, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

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



Amy Schneider
Notary Public in and for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____

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Jeff Martin Clerk & Recorder, Yellowstone MT

KATHERINE K. THORNTON TESTAMENTARY TRUST

By: Max E. Thornton
Max E. Thornton, Co-TrusteeBy: [Signature]
First Interstate Bank Of Commerce, Co-TrusteeIts: Trust SpecialistBy: [Signature]
First Interstate Bank of Commerce, Co-TrusteeIts: Warrant Advisor

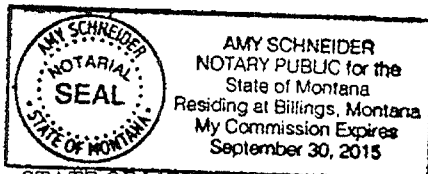
STATE OF MONTANA)

: SS

County of Yellowstone)

On this 7th day of July, 2014, before me, a Notary Public in and for the State of Montana, personally appeared Max E. Thornton, known to me to be a Co-Trustee of the Katherine K. Thornton Testamentary Trust, the person who executed the foregoing instrument and acknowledged to me that they executed the same.

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



Amy Schneider
Notary Public in and for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____

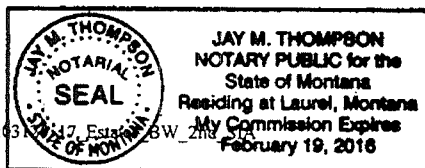
STATE OF MONTANA)

: SS

County of Yellowstone)

On this 7th day of July, 2014, before me, a Notary Public in and for the State of Montana, personally appeared Erin Pinney and Lynn Caraveau of First Interstate Bank of Commerce, known to me to be Co-Trustees of the Katherine K. Thornton Testamentary Trust, the persons who executed the foregoing instrument and acknowledged to me that they executed the same.

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



Jay M Thompson
Notary Public in and for the State of Montana
Printed name: Jay M Thompson
Residing at: Laurel MT
My commission expires: 02/19/2016

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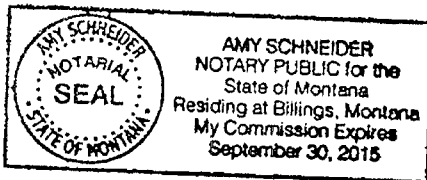
PM & M, LLC

By: Richard W. Pansch
Its: M, M

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this 7th day of July, 2014, before me, a Notary Public in and for the State of Montana, personally appeared Richard W. Pansch, known to me to be the Manager of PM & M, LLC, the person who executed the foregoing instrument and acknowledged to me that he/she executed the same.

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



Amy Schneider

Notary Public in and for the State of Montana

Printed name: _____

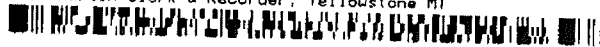
Residing at: _____

My commission expires: _____

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Jeff Martin Clerk & Recorder, Yellowstone MT



This Agreement is hereby approved and accepted by City of Billings, this 28th day
of July, 2014.

"CITY"

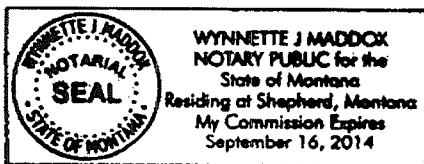
CITY OF BILLINGS, MONTANA

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
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.



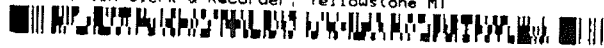
Wynnette J. Maddox
Notary Public in and for the State of Montana
Printed name: Wynnette J. Maddox
Residing at: Shepherd MT
My commission expires: 9.16.2014

Approved as to Form:

Ment Mooka
City Attorney

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Jeff Martin Clerk & Recorder, Yellowstone MT

WAIVER OF RIGHTS TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and sole owner of the hereinafter described real property, do hereby waive for a period of 20 years after the date that the final subdivision plat is filed, the right to protest the formation of one or more special improvement district(s) 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 are supported by sufficient independent consideration to which the undersigned is a party, and shall run with the land and shall be binding upon the undersigned, its 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:

The Estates at Briarwood Subdivision, Second Filing

"SUBDIVIDER"

Max E. Thornton

MAX E. THORNTON

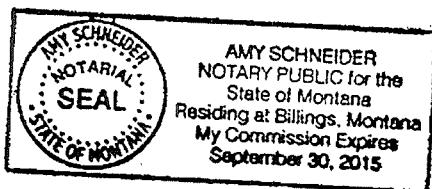
STATE OF MONTANA)

: ss

County of Yellowstone)

On this 7th day of July, 2014, before me, a Notary Public in and for the State of Montana, personally appeared Max E. Thornton, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

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



Amy Schneider

Notary Public in and for the State of Montana

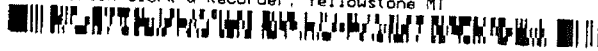
Printed name: _____

Residing at: _____

My commission expires: _____

SIA

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08/04/2014 03:54 PM Pages: 18 of 19 Fees: 5.00
Jeff Martin Clerk & Recorder, Yellowstone MT

KATHERINE K. THORNTON TESTAMENTARY TRUST

By: Max E. Thornton
Max E. Thornton, Co-TrusteeBy: [Signature]
First Interstate Bank of Commerce, Co-TrusteeIts: Trust SpecialistBy: [Signature]
First Interstate Bank of Commerce, Co-TrusteeIts: WEAVER ADVISOR

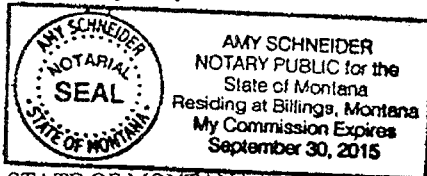
STATE OF MONTANA)

: SS

County of Yellowstone)

On this 7th day of July, 2014, before me, a Notary Public in and for the State of Montana, personally appeared Max E. Thornton, known to me to be a Co-Trustee of the Katherine K. Thornton Testamentary Trust, the person who executed the foregoing instrument and acknowledged to me that they executed the same.

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



[Signature]
Notary Public in and for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____

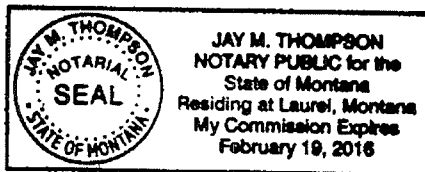
STATE OF MONTANA)

: SS

County of Yellowstone)

On this 7th day of July, 2014, before me, a Notary Public in and for the State of Montana, personally appeared Erin Pinney and Lynn Caraveau of First Interstate Bank of Commerce, known to me to be Co-Trustees of the Katherine K. Thornton Testamentary Trust, the persons who executed the foregoing instrument and acknowledged to me that they executed the same.

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

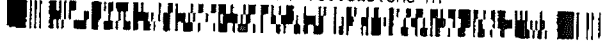


[Signature]
Notary Public in and for the State of Montana
Printed name: Jay M Thompson
Residing at: Laurel MT
My commission expires: 02/19/2016

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Jeff Martin Clerk & Recorder, Yellowstone MT



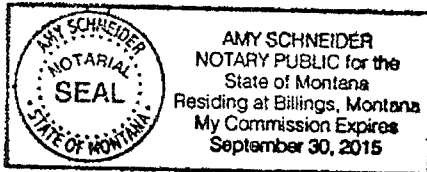
PM & M, LLC

By: Richard W. Praesch
Its: Mgr

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this 7th day of July, 2014, before me, a Notary Public in and for the State of Montana, personally appeared Richard W. Praesch known to me to be the Manager of PM & M, LLC, the person who executed the foregoing instrument and acknowledged to me that he/she executed the same.

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



Amy Schneider
Notary Public in and for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____