

Floyd C. Bossard, Manager
Richard C. Bossard, Manager
Whiskey Flats Subdivision, Phase III
222 Aspen Loop
Butte, Montana 59701

**DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR WHISKEY FLATS
SUBDIVISION – PHASE III
GRANITE COUNTY, MONTANA
AMENDED 6/12/07**

WHEREAS, the Declarant, Bossard LLC and Whiskey Flats LLC is the owner of certain property in Granite County, Montana to-wit. Subdivision, Plats # , recorded at Granite County, Montana as Documents # , and the Declarants are desirous of placing certain restrictions, limitations and regulations as to the use of said Whiskey Flats Major Subdivision—Phase III.

NOW THEREFORE, the Declarants do hereby establish, dedicate, declare, publish and impose upon premises the following protective covenants which shall run with the land and shall be binding upon and be for the benefit and value of Whiskey Flats subdivision – Phase III, and all persons claiming under it, its grantees, successors, and assigns and shall be for the purpose of maintaining a uniform and stable value, character, architectural design use and development of the premises. The conditions, covenants and restrictions shall apply to both Subdivision and to all improvements placed or erected thereon unless otherwise specifically accepted and shall be in existence and full force and effort until 12:01 a.m., July 1, 2036, unless otherwise terminated by law or amended as herein provided.

USE

A. RESIDENTIAL LOTS

a. No additional splits of these tracts is allowed until municipal sewer and water are extended to the subdivision. The division of tracts 4 acres or greater in area is allowed when municipal sewer and water are extended to the subdivision. All tracts created through future division must be a minimum of 2 acres in size and connected to the municipal water and sewer systems at the time of creation.

b. All tracts shall be used for single family residences and attached or detached garages. No single family dwelling may be used for condominium or time share purposes.

c. No building or improvement shall be placed, constructed, reconstructed, altered or remodeled on any single residential lot except to provide for a single family dwelling erected on said site. No building or structure previously constructed shall be moved or relocated to any residential tract within this subdivision.

d. No tents, campers or mobile units shall be used for habitation on any lot. The recreational use by children of tents is allowed so long as tents are not used for permanent or seasonal habitation by adults nor interfere with the peace and tranquility enjoyed by adjacent or nearby lot owners. During construction of a single family residence a camper or single wide mobile home may be placed on a lot for no longer than one year, but said unit must be self contained and cannot be used for seasonal habitation.

e. Each dwelling shall be constructed so as to include not less than 1200 square feet of living space, exclusive of open porches, patios, carports, garages, or basements. The garage shall not be used to store commercial or industrial equipment.

f. The placement of any structure shall be so as not to unreasonably interfere with the view, building sites, elevations and general aesthetics considerations of nearby or adjoining lots. Any disputes arising from the placement of a structure of any whatsoever nature shall be mediated and controlled by a majority vote of the Architectural Committee (Section G), prior to construction.

g. Bussing services, except for the services needed for special needs students, to properties within 3 miles of schools may not be available.

B. HEALTH AND SANITATION

a. Sanitation – No on-site septic system shall be placed, constructed or altered in such a manner as to constitute a health hazard to adjoining lots, nor shall any septic system be placed, constructed or altered in a location save and except that location as approved by the Montana Department of Environmental Quality on the plat submitted to the sanitation official of Granite County.

b. All on-site septic systems shall be approved by the Sanitarian of Granite County, Montana, and shall be placed and constructed in accordance with the laws, rules and regulations of the Montana Department of Health and Environmental Quality and its successors. Locations of septic systems and wells must be approved in advance by the Granite County Sanitarian.

c. All on-site septic systems shall receive periodic maintenance so as not to become offensive to adjacent or adjoining lot owners. These covenants specifically prohibit the use or continued use of a septic

system that proves a nuisance or a hazard to adjoining or adjacent lot owners. No toxic or hazardous wastes or chemicals can be disposed of in the septic system.

d. All domestic wells shall be placed at a location on each tract so as to be in full compliance with the sanitation requirements of Granite County, Montana as well as the Montana Department of Environmental Quality and its successors.

e. No homeowner shall have the right to oppose the creation of a Special Improvement District, which is being created or amended to expand the Town of Philipsburg's municipal water and/or sewer system.

f. Should a Special Improvement District for water and/or sewer be created, the individual lot owners must comply with the restrictions of this district, including but not limited to: disconnection and/or abandonment of any well and/or sewer system and connection to new municipal water and/or municipal sewer systems.

g. The owners of a tract shall be responsible for the orderly removal of junk, garbage, litter, and trash so as to not unduly impact the values of adjoining lots. They are encouraged to employ conservation techniques, including recycling, to limit refuse amounts.

h. No tract may be used for the storage of pickup camper units, camp trailers, motor homes, utility trailers, snowmobile trailers which are not fenced or screened from view of adjoining or adjacent lots. No inoperable vehicles of any nature may be stored on any tract.

i. No open fires of any nature are allowed on any tract except in a designated fire pit or barbecue unit.

j. Except in an emergency situation when necessary for the preservation of life or property, the discharge of firearms shall be prohibited. The hunting of game animals on the subdivision is prohibited.

k. No noxious chemicals or industrial solvents are allowed to be stored on or maintained on any tract.

l. The phosphorous content of household cleaning products used in any dwelling is limited to less than 0.5% (one-half of one percent or less) except that:

- a. Automatic dishwashing detergent may contain 8.7% phosphorous and;
- b. Chemical water conditioners may contain up to 20.0% phosphorous.
- m. The purchaser of the tract is responsible for installing and maintaining culvert pipe in approach roads that cross ditches. Property owners are also responsible for keeping them unplugged.

C. EASEMENTS, UTILITIES, CONSTRUCTION

- a. Easements for roads, drainage, settling ponds, electricity, telephone, cable television and all other utilities are hereby reserved on the Certificate of Survey plat. All new utilities shall be buried underground.
- b. Easement areas may be landscaped by lot owners as to enhance their appearance so long as the landscaping does not interfere with the use of the property as an easement.
- c. There shall be no fencing, structure or obstruction of any type installed within any of the Granite County or Town of Philipsburg Road right-of-ways. It is the property owners' responsibility to ensure all fencing is constructed out of the road right-of-ways. Previous fence lines are not always accurate and should not be used as a determination of the road right-of-way.
- d. Landscaping within all easement of which the Town of Philipsburg has been granted an easement shall be limited to sod or native grasses. Planting of trees or shrubs and placement of fencing, or structures within all easements is strictly prohibited.
- e. The area from the western edge of the NorthWestern gas line easement dividing Tracts 55, 68, 69, 70, 77, 78 and 81 to the eastern boundary of each of the before named tracts is an unbuildable/undevelopable area. Landscaping in this area is limited to sod, native grasses or existing planted trees.
- f. Prior to construction of a basement on Tracts 77, 78 and 81, soils should be further tested to determine whether an engineered basement is needed due to poor soil suitability.
- g. Erosion control techniques must be practiced by property owners, including silt fencing, placement of spoil piles, etc., for development during and after construction of all structures and improvements.

- h. Revegetation and reseeding of disturbed areas is required.
- i. No homeowner shall have the right to protest the creation of a Special Improvement District, created or amended for the purposed of road maintenance.
- j. There will be no construction on Commercial Lots 87 and 88 until such time that the Developer, Philipsburg Town Council, and Granite County Commission agree and approve commercial covenants for Lots 87 and 88.
- k. No property owner shall plow, place or cause to be plowed or placed, any snow into any public right-of-way, street or road.

D. WILDLIFE AND ANIMALS

- a. Homeowners must accept the responsibility of living with wildlife and be responsible for protecting their vegetation from damage by wildlife, by confining pets, and properly storing garbage and other potential attractants. Artificial feeding of and placing salt licks for big game is prohibited by Montana Law.
- b. Animals such as dogs, cats and birds are allowed in the subdivision as pets only and so long as they do not constitute a nuisance to others. The commercial breeding of such animals is forbidden. Animals must be under the control of the owner and any animal that constitutes a continuing nuisance shall be controlled by a leash or a kennel. Continual violation of this covenant will constitute grounds for the removal and prohibition of the animal from the subdivision.
- c. Horses and pack llamas are allowed on tracts larger than three acres in area, so long as they are contained within the fenced area. All animal residues must be collected and removed from the said lot in a timely manner. No feed-lot types or operations are allowed. Pigs and pig farms are specifically excluded from the tracts.

E. MINING AND ENVIRONMENT

a. No mining quarry, excavation, oil drilling, or development of any kind shall be allowed in or on the premises except for such excavation as may be necessary in connection with the construction or placing of improvements thereon in accordance with the terms and restrictions of these covenants.

b. Every attempt shall be made to preserve and protect the environment indigenous to the area. Disturbance, destruction, or damage to all plant life, all animal life, and their natural habitats, is strictly forbidden except where absolutely necessary for the placement or construction of improvements. All ground disturbances of any nature shall be returned as quickly as possible to their natural condition and replanted with native plants except where otherwise utilized for lawns, gardens, or exterior living areas.

c. The tract owner shall control all noxious weeds and plants and shall eradicate them in accord with the acceptable practices and rules as promulgated by the Weed Control Board of Granite County, Montana. Failure by a lot owner to control noxious weeds shall constitute a breach of these covenants and shall allow for chemical eradication by Granite County or the homeowners association with the cost being the responsibility of the lot owner.

F. COMMERCIAL ACTIVITIES, SIGNS AND ADVERTISING

a. No tract within the subdivision nor improvements constructed thereon shall be used for commercial activities or purposes of any nature save and except those professional practices that may be carried on within the confines of a single family dwelling.

b. A currently installed billboard on Tract 3 is approved indefinitely. All other signs, billboards, posters, and advertisements are prohibited unless they have received the approval of the Architectural Committee. The Declarants reserve the right to place appropriate signage during the marking of the tracts.

G. ARCHITECTURAL COMMITTEE

a. There is hereby created an Architectural Committee which is herein referred to as the "Committee" or the "Architectural Committee", which shall consist of three persons. One member of the committee shall be appointed by the lot owners and one by the developer. The members shall select the third member who must be a property owner. Each committee member shall have one vote and in the case of an impasse in voting, the committee shall submit an impasse to an impartial arbitrator whose decision shall be final.

b. No building, construction, reconstruction, alteration, remodeling, landscaping, parking fence, wall or other improvement shall be placed, constructed, erected, repaired, restored, reconstructed, altered, remodeled, added to or maintained on any site or tract until building drawings, plans and specifications and such other information as the Committee may reasonably require, is submitted to, and approved by, a majority of the Committee in writing. Nor may the same be commenced until the Committee shall have issued a permit allowing for such improvements. The Committee shall recognize and approve colors that blend and compliment the natural environment.

c. The Committee shall require that all construction complies with the provision of the following standard codes or their amendments:

Uniform Building Code
International Conference of Building Officials
National Plumbing Code
National Electrical Code
National Fire Protective Association
Building Codes of Granite County, Montana, if any

d. The Committee shall have the authority to reject the materials, design, and colors submitted within plans or the plans themselves if they are not compatible, or are inappropriate, to the rest of the subdivision.

e. All improvements, construction, reconstruction, alterations, remodeling or any activity requiring the approval of the Committee must be completed in substantial compliance with the plans and specifications initially approved by the Committee and for which permits have been issued.

f. The Committee shall have the power, authority, standing, and right to enforce these covenants in any court of law or equity when it reasonably believes the same have been violated and as more specifically set forth in paragraph g (below), and shall have the authority to revoke or suspend building permits and/or order the suspension or cessation of any construction or work in violation of these covenants or of any permit issued by the Committee.

g. The Committee shall be governed by the following guidelines in its consideration of the plans and specifications submitted for its approval.

1. In considering any plans and specifications, the Committee shall examine the suitability of the same to the site, including materials of which it is to be constructed, as well as the relationship of the same to the adjacent properties.

2. No plans or specifications shall be approved which will be so similar or dissimilar to other improvements or structures that monetary or aesthetic values will be impaired.

3. All plans or specifications shall be in full compliance with all of the terms and provisions of these covenants, except for any variances, which may have been granted by the Committee for such plans and specifications.

h. All construction on or in the premises shall be diligently completed within 12 months or commencement unless specific written extension is granted by the Committee. No construction material shall at any time be placed or stored so as to impeded, obstruct, or interfere with pedestrian or vehicular traffic and no construction materials shall be placed or stored on residential tracts for a period not to exceed 60 days following substantial completion of construction as shall be determined by the Committee.

i. All lot owners must comply with the Laws and Regulations of the State of Montana and Granite County as to fire protection, building construction, sanitation, public health and safety. All structures are to be placed a minimum of five feet from all property lines to minimize the potential of flame spread from structure fires.

j. The lot owner shall obtain all required county and state permits prior to initiation of construction.

k. All property owners must obtain an encroachment permit from the Granite County Road Department and/or the Town of Philipsburg Public Works Department whichever has jurisdiction for all new driveway approaches prior to construction of driveways.

l. The Committee or individual members thereof may not be held liable to any person for any damages which may result from Committee action taken pursuant to these covenants, including but not by way of limitation, damages which may result from correction, amendment, change or rejection of plans, the issuance, suspension or enforcement of building permits or any delays associated with such action on the part of the Committee.

H. HOMEOWNERS ASSOCIATION

- a. Each lot owner shall become a member of Whiskey Flats Subdivision – Phase III Homeowners Association and abide by its laws.
- b. The portion of Lot 86 located south of the road easement, which was previously bisecting proposed lot 86 is reserved for the location of the fire cistern.
- c. The private roads, settling ponds 3 and 4, and water cistern servicing Phase III will be deeded to the Homeowners Association, which is responsible for their repair and maintenance. It shall be the responsibility of the Homeowners Association to pay all taxes levied and to repair and maintain the private roadways within the subdivision until such time by petition said roadways are dedicated to Granite County, Montana by acceptance of the governing body of Granite County, Montana.
- d. The Whiskey Flats Phase III Homeowners Association will be responsible for maintenance and ensuring access for emergency vehicles remains open at all times of the year until such time a Special Improvement District may be formed to assume the maintenance of any roadways.
- e. Biannual dust abatement applications to dusty roads within Whiskey Flats Phase III will be the responsibility of the Homeowners Association.
- f. No annual assessment shall be made for more than two hundred and fifty dollars per tract without approval of a three-quarters majority of the tract owners.
- g. A two-thirds vote of the Homeowners Association is required to amend these covenants and restrictions.
- h. All proposed amendments of any covenant associated with this development must first seek the approval of the Granite County Commission and the Town Council of Philipsburg prior to being filed and recorded with the Granite County Clerk and Recorder.
- i. No homeowner shall have the right to protest the creation of a Special Improvement District, which is being created or amended for the purpose of road maintenance.
- j. No homeowner shall have the right to protest the creation of a Special Improvement District, which is being created to expand the Town of Philipsburg's municipal water or municipal sewer systems.

I. NUISANCE

No noxious or offensive use or activity shall be carried on within the subdivision or anything done or permitted on or in the premises which shall constitute a public nuisance.

J. PARKING

- a. All parking of vehicles shall be on the individual sites so as not to impede fire and public utility services.
- b. There is to be a five-foot setback for all structures from the property lines to permit adequate access for fire fighting equipment.

K. LIVING WITH WILDLIFE (MONTANA FISH, WILDLIFE & PARKS)

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, bears, mountain lions, coyotes, skunks, etc. Please contact the Montana Fish, Wildlife & parks office in Missoula (3201 Spurgin Road, Missoula, Montana 59804) for brochures that can help homeowners "live with wildlife". Alternatively, see FWP's website at www.fwp.mt.gov.

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. Homeowners must be aware of the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, and repellants) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. Gardens and fresh fruit trees can attract wildlife. Keep the produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To help keep wildlife such as

deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.

c. Do not feed wildlife or offer supplements (such as salt blocks) attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.

d. Birdseed is an attractant to bears. If used, bird feeders should: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.

e. Garbage should be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. If stored indoors, garbage cans may not be set out until the morning of garbage pickup, and must be brought indoors no later than that same evening.

f. Pets must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.

g. Pet food and livestock feed should be stored indoors, in closed sheds, or in animal-resistant containers in order to avoid attracting wildlife such as bears, skunks, raccoons, etc. When feeding pets or livestock do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.

h. Barbecue grills should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc. can attract bears and other wildlife.

i. Consider boundary fencing that is not higher than 3 ½ feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.

j. These “living with wildlife” covenants cannot be altered or eliminated without the consent of the governing body (Granite County Commissioners).

I. ENFORCEMENT

a. In the event of any violations or threatened violation of these covenants, any owner of real property in the premises, or the committee, may enforce these covenants by legal proceedings in a court of law or equity, including the seeking of injunctive relief and damages. In association with such legal proceedings or as a separate remedy, such owner or the Committee may enter upon the property in question and remove, remedy or abate the violation or threatened violation after first having given property notice and reasonable opportunity for the violator to take action himself to comply with these covenants as set forth below.

b. Notice as required in paragraph (L-a) above, shall be in writing and shall be served on the person or entity concerned and shall specify the violation or threatened violation, identify the property, demand compliance with the terms and conditions of these covenants and shall state in the action which will be taken under paragraph (L-a) above if the violation or threatened violation is not abated, remedied, or satisfied. If such notice cannot be personally served after a reasonable effort to locate the person or entity to be served, service may be had by posting a copy of such notice at a conspicuous place on the property which is the subject of such violation and mailing a copy of the notice by Certified Mail, return-receipt requested, to the last known address or address of record, of the violator. Such notice must further be provided for a period of fifteen (15) days from the date of personal service of such notice, or thirty (30) days from the date of posting and mailing of the same, with which compliances can be had with these covenants before any self help, abatement, entry or commencement of litigation as provided in paragraph (L-a) can be commenced.

c. No owner or member of the committee shall be liable to any person or entity for any entry, self help, or abatement of a violation or threatened violation of these covenants and all owners or leases of real property shall be deemed to have waived any and all rights or claims to or for damages for any loss or injury resulting from action taken to abate, remedy, or satisfy any violation or threatened

violation of these covenants. Exception to the above shall exist for loss, injury or damage for intentionally wrongful acts.

d. Actual costs, expenses, and reasonable attorneys' fees connected with correcting, remedying, abating, preventing or removing any violation or threatened violation of these covenants incurred either through litigation, entry, or self help shall constitute a claim by the owner or the Committee initiating such action against the owner of the property which is subject of such violation or threatened violation. Such claim shall not, however, exceed Five Thousand Dollars (\$5,000) for any one claim and shall be enforceable through appropriate court actions. The owner or the Committee making such claims may file a lien against the subject property in the amount of and for the collection of the claim by filing a verified statement of the lien with the office of the Clerk and Recorder, Granite County, Montana. Such lien statement must set forth the names of the claimant, the date of the claim, and a brief statement of the manner in which the costs and expenses of the claim were incurred. Once filed, the lien shall remain on record as a claim against the property until paid in full or foreclosed in the manner otherwise provided by law, subject to rights of redemption.