

After recording mail to:

TEAM Development, LLC  
P.O. Box 1642  
Brush Prairie, WA 98606  
(360) 907-3865

## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SOUTHSIDE ESTATES**

THIS DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by the undersigned, Team Development LLC, of Brush Prairie, Washington (hereinafter "Declarant").

### **WITNESSETH:**

**Whereas**, Declarant is the Owner of certain real Property in Flathead County, Montana, known as Southside Estates Subdivision, for which a plat or map whereof is on file and of record in the office of the County Clerk and Recorder of Flathead County, Montana; and,

**Whereas**, Declarant desires to subject said real Property to the covenants, conditions and restrictions hereinafter set forth, each and all of which is and are for the benefit of said Property and for each Owner thereof, and shall inure to the benefit of and pass with said Property, and each and every parcel thereof, and shall apply to and bind the successors in interest, and any Owner thereof:

**Now, Therefore**, for the purpose of providing a uniform plan for the development of the Property and protecting the value and desirability of the Property, Declarant hereby declares that the real Property described above and in Article 1 is and shall be held, transferred, sold and conveyed subject to the covenants, conditions and restrictions hereinafter set forth. These covenants are in addition to the requirements of the underlying zoning which is R-4 (Residential).

## **ARTICLE I DEFINITIONS**

**Section 1.1 – Association:** 'Association' means the Southside Estates Homeowners Association, and its successors and assigns.

**Section 1.2 - Board of Directors:** 'Board of Directors' means the Board of Directors of the Association.

**Section 1.3 – Bylaws:** ‘Bylaws’ means the Bylaws of the Association as the same may be amended from time to time.

**Section 1.4 - Common Area:** ‘Common Area’ means the Property which is subject to this Declaration, but excluding individual Lots within the Property and property dedicated to the City of Kalispell, Montana for public use including streets, public utilities, and related improvements. Thus, the Common Area includes real Property maintained by the Association for the common benefit of the Owners and such other persons as may be permitted to use the Common Area under the terms of this Declaration or any contract with the Association. Initially, the Common Area includes two storm-water retention systems, and a sound wall along the West Property boundary. The initial Common Area may also include landscaping improvements and a playground area with playground equipment.

**Section 1.5 - Common Expenses:** ‘Common Expenses’ means (a) the expenses of maintaining, managing, and operating the Common Area; (b) premiums for liability insurance carried by the Association; (c) all other expenses incurred by the Association in administering, servicing, conserving, managing, paying Property taxes upon, maintaining, repairing, or replacing the Common Area and any improvements located on it; (d) all expenses incurred by the Association in administering and managing the Association and this Declaration; (e) all expenses incurred by the Association in any other activities undertaken for the common benefit of all or some of the Owners; and (f) all expenses lawfully determined to be Common Expenses by the Board of Directors of the Association, as provided in this Declaration and in the Articles and Bylaws of the Association.

**Section 1.6 – Declarant:** ‘Declarant’ means Team Development LLC. Declarant may assign some or all of its rights under this Declaration to a third party by a written instrument specifically referring to such rights recorded in the records of Flathead County, Montana. Such instrument may specify the extent and portion of the rights or interests of Declarant which are being assigned, in which case the initial Declarant shall retain all other rights as Declarant.

**Section 1.7 – Declaration:** ‘Declaration’ means this Declaration of Covenants, Conditions and Restrictions of Southside Estates, as it may be amended from time to time.

**Section 1.8 – Lot:** ‘Lot’ means each parcel within the Property described below, which is designated as a Lot on a plat of the Property, including any such parcel owned by Declarant and excluding any Common Area.

**Section 1.9 – Owner:** ‘Owner’ means any person or entity owning a fee simple interest in a Lot or a contract purchaser, whether one or more persons or entities, owning or purchasing a Lot, but excluding those having a mortgage or an interest merely as security for the performance of an obligation, provided, however, that prior to the first conveyance of a Lot for value, the term “Owner” shall mean “Declarant” or its successors or assigns.

**Section 1.10 - Period of Declarant Control:** ‘Period of Declarant Control’ means the period beginning on the date this Declaration is first recorded in the office of the Clerk and Recorder of Flathead County, Montana, and ending on the earlier of: (a) the date which is 10 years later, or (b) the date on which the Declarant has sold ninety percent (90%) of the Lots within Southside Estates and has notified the Association in writing that Declarant has determined that no additional Property shall be added to Southside Estates. The Period of Declarant Control may be reinstated or extended by agreement between Declarant and the Association upon such terms and conditions as the parties may agree. After the termination of the Period of Declarant Control, Declarant, if still an Owner, will continue to have all the rights and duties ordinarily given to Owners under this Declaration.

**Section 1.11 – Property:** ‘Property’ means the real Property which is and shall be held, transferred, sold and conveyed subject to the covenants, conditions, and restrictions herein set forth and more particularly described as follows:

THAT PORTION OF THE SOUTHWEST ONE QUARTER OF THE  
SOUTHEAST ONE QUARTER OF SECTION 19, TOWNSHIP 28 NORTH,  
RANGE 21 WEST, PRINCIPAL MERIDIAN, MONTANA, FLATHEAD  
COUNTY, MONTANA AND BEING MORE PARTICULARLY  
DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE  
SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF  
SAID SECTION 19; THENCE S00°29'25"E ON AND ALONG THE  
EAST LINE OF THE SOUTHWEST QUARTER OF THE  
SOUTHEAST QUARTER, A DISTANCE OF 1022.22 FEET TO A  
POINT ON THE NORTHEASTERLY RIGHT-OF-WAY OF U.S.  
HWY No. 93 ALTERNATE ROUTE; THENCE N36°44'56"W ON  
AND ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 1260.44  
FEET TO A POINT ON THE NORTHERLY LINE OF THE  
SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF  
SECTION 19; THENCE N89°03'52"E ON AND ALONG SAID  
NORTHERLY LINE, A DISTANCE OF 751.44 FEET TO THE  
POINT OF BEGINNING. THIS TRACT CONTAINS 8.816 ACRES,  
SUBJECT TO AND TOGETHER WITH ALL APPURTENANT  
EASEMENTS AND ENCUMBRANCES APPARENT AND OF  
RECORD.

**Section 1.12 – Southside Estates:** Southside Estates shall mean all of the real property located in Flathead County, Montana, described in Section 1.11, above, as well as all real property which in the future becomes part of the Southside Estates Homeowners Association. Additional real property within Flathead County, Montana, may become part of the Southside Estates Homeowners Association in the future, as provided in Section 6.4, below, and in such event shall be deemed to be within Southside Estates and subject to all of the provisions contained in this Declaration.

**Section 1.13 - Other Definitions:** Other definitions may be found throughout this Declaration. Any term not specifically defined shall be deemed to have its common and ordinary meaning.

## **ARTICLE II** **HOMEOWNERS ASSOCIATION**

**Section 2.1 - Establishment of Association and Adoption of Bylaws:** An Association is hereby established known as "Southside Estates Homeowners Association." Said Association may be incorporated under a different name as may be determined by the Association and approved by the Montana Secretary of State. The Association shall be formed prior to the close of sale of any Lot within the Property. The Bylaws of the Association will be adopted by the Association prior to the close of sale of any Lot within the Property.

**Section 2.2 – Powers:** The Association shall have all such powers as permitted by the laws of the State of Montana, provided that the Association shall be subject to and abide by the provisions of this Declaration, as the same may be amended from time to time.

**Section 2.3 – Membership:** All Owners of the Lots within Southside Estates shall be members of the Association. The Owners of any Lot shall automatically become members of the Association and shall remain members until such time as the Ownership of such Lot ceases for any reason, at which time the corresponding membership in the Association shall cease.

For the purpose of determining membership at any meeting, a person or entity shall be deemed to be a member upon the recording of a duly executed deed to that Owner, or upon the recording of a notice of a purchaser's interest or an abstract of a contract for deed showing a contract purchase by an Owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership.

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

Members shall participate in the manner prescribed by the Articles and Bylaws of the Association, and resolutions of the Association's Board of Directors.

**Section 2.4 - Owners' Address:** Upon acquiring a Lot, the Owners of the Lot shall immediately inform the Association of their names and of one address to which notices from the Association should be sent. The Owners shall be responsible for informing the Association of any change of address.

**Section 2.5 – Voting:** There shall be one vote for each Lot. If a person or entity owns more than one Lot, that person or entity shall have as many votes as the number of Lots owned by that person or entity. If more than one person or entity has an Ownership interest in a single Lot, such persons or entities must decide among themselves how the vote for that Lot shall be cast.

**Section 2.6 - Management During Period of Declarant Control:** During the Period of Declarant Control, Declarant may appoint, remove and replace from time to time any or all of the directors and officers of the Association. If Declarant so elects, Declarant may from time to time relinquish, either on a temporary or permanent basis, the right to appoint all or a portion of the directors and officers of the Association. Any such relinquishment shall be expressed in writing to the Association.

**Section 2.7 - Association Meetings:** Annual and Special meetings of the Association shall occur as set forth in the Association's Bylaws.

**Section 2.8 - Turnover Meeting:** The Declarant reserves the right, at any time before the expiration of the Period of Declarant Control, to call a special meeting of the Association for the purpose of transferring control of the Association to the members. Should the Declarant call such a meeting, it shall present to the members its plan for the orderly transfer of control of the Association to the members, and the members will be obligated to accept control of the Association in accordance with such plan.

### **ARTICLE III COMMON AREA**

**Section 3.1 - Control and Management:** The Association shall have the exclusive right and obligation to manage, control, improve and maintain the Common Area within Southside Estates. The Association shall be responsible for liability insurance, state and local taxes payable by the Association, and maintenance of facilities and improvements in the Common Area. The Board of Directors, among its other duties, shall establish and levy assessments to pay for the taxes payable by the Association, insurance, maintenance and other expenses associated with the Common Area under the control and authority of the Association. The Board of Directors may, in its discretion, adjust the assessments to meet the changing needs of the Southside Estates community and the areas serving the community.

**Section 3.2 - Property Taxes:** It is acknowledged that, for property tax purposes, Flathead County and the State of Montana may allocate to each Lot a fractional, proportional portion of the value attributable to the Common Area. By accepting a deed to a Lot, the Owner agrees to this mechanism for property taxation and agrees to pay a proportional share (as allocated by Flathead County and the State of Montana) of the taxes attributable to the value of the Common Area, while at the same time allowing the Association to administer and control the Common Area.

**Section 3.3 - Easements Over All Common Area:** The Owners shall have an easement for the use and enjoyment of all of the Common Area, subject to such rules and regulations as the Association may develop from time to time, and also subject to the rights reserved to Declarant and the reserved rights of any third parties with respect to the Common Area. Declarant reserves and shall have an easement over all of the Common Area for ingress, egress and utilities. Declarant may grant further easements to others for such use of the Common Area.

**Section 3.4 - No Dedication to the Public:** Nothing in this Declaration will be construed as a dedication to public use, or a grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any Common Area by such authority or utility, absent an express written agreement to that effect. However, the Association has the right to dedicate or transfer all or part of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to.

**Section 3.5 - Approval of Declarant:** During the Period of Declarant Control, no construction of improvements shall take place within the Common Area nor shall any other changes or alterations be made to the Common Area or the uses within the Common Area without the prior written consent of the Declarant.

## **ARTICLE IV ASSESSMENTS**

**Section 4.1 – Assessments:** Each Owner, whether or not it shall be so expressed in any deed or contract, is deemed to have agreed to this Declaration, and to pay to the Association assessments for Common Expenses as provided herein, including annual assessments or charges, and special assessments for capital improvements and other expenses, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on each Lot, and shall be a continuing lien upon the property against which each such assessment is made. Each assessment, together with any accruing interest, costs and attorney's fees, shall be the joint and several personal obligation of the Owner(s) of such Lot at the time when the assessment is due.

**Section 4.2 - Purpose of Assessments:** The assessments levied by the Association shall be used to promote the health, safety, convenience, and welfare of the Owners; for the improvement, repair and maintenance of easements, trails, and the Common Area; and for any other purposes, expressed or implied in this Declaration.

**Section 4.3 - Annual Assessments:** The maximum annual assessment per Lot which may be made by the Association in any calendar year shall not substantially exceed the projected and

budgeted actual and reasonable costs to be incurred by the Association during the coming year in carrying out its functions, and may include a reasonable reserve for contingencies. The annual assessment shall be equal for each Lot. Payment of the annual assessment shall be due and payable on a date or dates established by the Board of Directors, in an annual, monthly, quarterly, or other periodic installment as the Board of Directors may provide.

The initial annual assessment shall be \$180.00 per Lot.

The amount of the annual assessments shall be fixed by the Board of Directors in the following manner:

At each annual meeting of the members, the Board of Directors shall present a proposed budget of the estimated expenses for the Association for the coming year to the members for review, discussion, amendment, comment and approval. Estimated expenses for the Association shall include, without limitation, the cost of maintenance, repair, and operation of the Common Area; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Association; common water and utility charges for the Common Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any deficit remaining from a previous assessment period; and the creation or supplementing of a reserve fund for general, routine maintenance, repairs and replacement of improvements within the Common Area on a periodic basis, as needed. The Members shall approve or amend the proposed budget by a majority vote of the members present or voting by proxy.

After the annual meeting, the Board of Directors shall set the amount of the assessments and the date(s) upon which they are due for the coming year to cover the budget approved in the manner herein set forth.

**Section 4.4 - Special Assessments:** The Board of Directors may, from time to time, levy upon and subsequently collect from each Owner a special assessment for each Lot. Special assessments may be levied for capital improvements or acquisitions, extraordinary expenses or for such other purposes as the Board of Directors may determine. Any special assessment shall be equal for each Lot. Payment of any special assessment shall be due and payable as the Board of Directors may provide.

**Section 4.5 - Priority of Lien for Assessments:** The lien of any assessments will be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Montana, and to all other liens and encumbrances *except* the following: (a) Liens and encumbrances recorded before the date of the recording of this Declaration; (b) Liens for real estate taxes and other governmental assessments or charges duly imposed against the Lot by a Montana governmental or political subdivision or special taxing district, or any other liens made superior by statute; and (c) The lien for all sums unpaid on a first mortgage taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of Flathead County, Montana, prior to the time of recording in said office of an instrument describing the Lot affected and listing the name or names of the Owner or

Owners and giving notice of such violation, breach or failure to comply, (with such superiority to include any and all advances made by the first mortgagee, even though some or all of such advances may have been made subsequent to the date of filing of a written lien statement for delinquent assessments). Any first mortgagee who acquires title to a Lot by foreclosing the first mortgage or by receiving a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the first mortgage, will take the Lot free of any claims for unpaid assessments, interest, late charges, costs, expenses, and attorney's fees against the Lot which accrue prior to the time such first mortgagee or purchaser acquires title to the Lot. All other persons who hold a lien or encumbrance of any type *not* described in subsection (a), (b) or (c), above, will be deemed to consent that their lien or encumbrance will be subordinate to the Association's future liens for assessments, interest, late charges, costs, expenses and attorney's fees, as provided in this Article and in this Declaration, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

**Section 4.6 - Failure to Pay Assessments - Remedies of the Association:** No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, or by abandonment of their Lot. Any assessment or installment of an assessment not paid within thirty (30) days after its due date will be delinquent. In the event of such delinquency, the Association may take any or all of the following actions:

- (a) Assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;
- (b) Charge interest from the date of delinquency at uniform rates set by the Board of Directors from time to time, but not to exceed the maximum rate of interest allowed by applicable law;
- (c) Suspend the voting rights of the Owner during any period of delinquency;
- (d) Bring an action against any Owner personally obligated to pay the delinquent assessments;
- (e) Record a notice of lien with the Clerk and Recorder of Flathead County, Montana. Upon delivery of the notice of assessment to the Owner, the assessment shall be a lien upon the Owner's Lot until paid. If the assessment is not paid within thirty (30) days after the recording of the notice of lien, the Association may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property;
- (f) The Association shall be entitled to recover from the Owner any and all reasonable attorney's fees and costs incurred in the collection of any delinquent assessments;

(g) The remedies provided under this Declaration shall not be exclusive, and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

**Section 4.7 - Sale or Transfer of a Lot:** The sale, transfer, or encumbrance of any Lot shall not affect the personal liability of the Owner responsible for the assessment or the assessment lien if a lien is recorded in the records of Flathead County, Montana. No sale or transfer to a third party with actual or constructive knowledge of an assessment shall relieve such new Owner from the liability for any outstanding assessments, or from any assessments thereafter becoming due, or from the recorded lien thereof. A person or entity purchasing a Lot shall be responsible for checking with the Association for any outstanding assessments against said Lot before closing the transaction.

**Section 4.8 - Statement of Status of Assessments:** On written request, the Association will furnish to an Owner or his designee or to any mortgagee a statement setting forth the amount of unpaid assessments then levied against the Lot in which the Owner, designee or mortgagee has an interest. The information contained in such statement, when signed by an officer, director or agent of the Association, will be conclusive upon the Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith.

**Section 4.9 - Declarant's Responsibility for Assessments:** Notwithstanding the foregoing, the Declarant, although a member of the Association, shall not be responsible at any time for payment of the annual assessments for Lots owned by Declarant, unless and until Declarant constructs a home on such Lot. The Declarant, however, shall pay a proportionate share of all current expenses of administration actually incurred by the Association from time to time for routine maintenance of the Common Area. For purposes of the foregoing sentence, the Declarant's proportionate share of such expenses shall be based upon the ratio of all Lots which are listed for sale owned by the Declarant at the time the expense is incurred (i.e., the number of Lots which are for sale) to the total number of such Lots plus Lots owned by third parties (i.e., the total number of sold Lots plus Lots which are for sale). So long as Declarant owns any Lots, any increase in the annual assessment and any special assessment shall require the Declarant's written consent. Further, the Declarant shall in no event be liable for any assessment levied in whole or in part to purchase any property from the Declarant or to finance any litigation or other claim against the Declarant, any cost of investigating and preparing such litigation or claim, or similar related costs.

## **ARTICLE V** **PROTECTIVE COVENANTS**

**Section 5.1 - Conditions from Subdivision Approval:** The conditions imposed upon the approval of the Southside Estates Subdivision are incorporated herein as part of this Declaration to the extent they apply to the use of the Property.

**Section 5.2 - Zoning Regulations:** The zoning of the Property at the time of the filing of this Declaration is R-4 and all uses must comply with that zoning unless the zoning has been changed prior to the attempted use. If the zoning has been changed, the use shall comply with the then existing zoning. In addition, if as at the present time there is a need for a zoning compliance permit from the local planning authority, (presently known as the Flathead Regional Development Office, or City of Kalispell), such permit shall also be required under this Declaration.

**Section 5.3 - Land Use:** No Lot shall be used except for one single-family residence not to exceed two stories in height. Basements are prohibited.

**Section 5.4 - Sewage Disposal:** No individual sewage disposal system shall be permitted. All sewage disposal shall be by connection to the City of Kalispell's sewer system.

**Section 5.5 - Water Supply:** No individual water supply system or systems shall be permitted. All water service must be furnished by public water connections.

**Section 5.6 - Building Location:** All structures shall be constructed within the setback requirements established by the City of Kalispell, Montana.

**Section 5.7 - Dwelling Design Guidelines:** Residential improvements shall be no higher than two (2) stories above finished grade level with a maximum of a thirty-four foot (34') ridgeline above the highest finished grade at the home foundation. Minimum square footage of heated living area for a single-family residence, excluding garage, enclosed patios or decks, attics and unheated storage areas, shall be as follows: (a) one story: 1,000 square feet; (b) two story: 1,200 square feet with a minimum of 600 square feet on the primary level. Maximum square footage of heated living area for a single-family residence, excluding garage, enclosed patios or decks, attics and unheated storage areas, shall be 2,500 square feet. All construction shall be complete within one year from the date construction begins.

**Section 5.7.1 - Exterior Finish:** The exterior of all construction on any Lot shall be designed, built and maintained in such a manner as to blend in with the natural surroundings, existing structures and landscaping in the Property. Exterior colors must be subdued earth tones. Exterior trim, fences, doors, railings, decks, eaves, gutters and the exterior finish of garages and other accessory buildings shall be designed, built and maintained to be compatible with the exterior of the structure they adjoin.

**Section 5.7.2 - Exterior Materials:** Roofing materials shall be minimum 25-year architectural laminated composition or equivalent composite material as may be further limited or described in the rules and regulations of the Association. Roofing colors must be earth tones, gray tones, or shades of black. No manufactured wood roofs or metal roofs are permitted. Window trim, if any, must be wood or vinyl wrap, or shutters. Exterior siding shall be cedar, L.P., Lap, Hardee Plank or other cementitious products. Minimum roof pitch is to be no less than five-twelve, (5:12).

**Section 5.8 – Landscaping:** The front yard landscaping of each Lot and the side yard landscaping of each corner Lot must be completed within three (3) months from the date of occupancy of the home constructed on the Lot. In the event of undue hardship due to weather conditions, this provision may be extended upon written request to the Association, (or Declarant during the Period of Declarant Control). Landscaping of all rear yard areas must be completed within six (6) months from the date of occupancy of the home on the Lot.

All front and rear yard areas shall be planted with any of the following: trees and shrubs, ground cover, conifer trees, deciduous shrubs and trees, and lawn areas. Each Lot must plant a minimum of three (3) trees with a base height of not less than six (6) feet. All other yard areas shall, at a minimum, be covered with bark mulch or similar material. Extensive areas of sparsely planted shrub beds covered with bark dust or similar materials is not permitted.

Mounding of planting beds and lawn areas will be permitted if graded so as to blend with adjacent property and/or landscaping. Special care shall be taken to ensure proper surface drainage to eliminate casual water pockets, and so as not to infringe on neighboring property.

Each Owner shall maintain the landscaping and yard area in an attractive appearance and free from insects and diseases and noxious weeds. Each Owner shall provide for the timely replacement of lost plant life and bark dust, and trimming and pruning of plant material to prevent an overgrown look. Hedges must be kept trimmed and neat and not exceed six (6) feet in height. No hedge, shrubs or other plantings or any fence shall be permitted which unreasonably obstructs the view of an Owner or motor vehicle driver.

**Section 5.9 - Landscaping of Boulevards:** All Lots shall be landscaped to the paved street. Boulevards shall be grass only except plantings approved by the City of Kalispell.

**Section 5.10 – Fences:** Fences shall not exceed six (6) feet in height, except a front yard fence, which shall not exceed three (3) feet in height. In no event shall side yard fences project beyond the front walls of any residence or any garage. For fencing along streets or open spaces, the ‘board finished side’ of any fence constructed of wood shall face away from the home. Electrical fences and barbed wire fences are prohibited. Fences shall be setback from the sidewalk three (3) feet.

**Section 5.11 - Owners' Obligation to Repair:** Each Owner, at the Owner's sole cost and expense, shall repair the Owner's residence, keeping the same in a condition comparable to the condition of the residence at the time of its initial construction, excepting only normal wear and tear.

**Section 5.12 - Owners' Obligations to Rebuild:** If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner or Owners, with all due diligence, to rebuild, repair, or reconstruct the residence in a manner that will substantially restore it to its appearance and condition immediately prior to the casualty.

Reconstruction shall be undertaken within six (3) months after the damage occurs, unless prevented by causes beyond the control of the Owner or Owners.

**Section 5.13 - Mobile Homes and Trailers for Residential Purposes:** No house trailer, mobile home, doublewide or any other prefabricated structure designed to be hauled or moved on wheels, shall be used for residential purposes. No structures of a temporary character, trailer, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence, whether temporarily or permanently.

**Section 5.14 - Commercial Activities:** No Lot or any part of the herein described Property shall be used at any time for any manufacturing or other commercial purpose that would cause any significant increase in traffic. Lawful home occupation businesses shall comply with the requirements of the City of Kalispell, including, without limitation, Municipal Code Section 27.20.060, as amended.

**Section 5.15 – Vehicles:** No truck (except pickups of 3/4 ton hauling weight or less), house trailer, motor home, camper, boat, motorcycles, motor-scooters, or trailer of any type shall be stored or parked on any Lot or street other than temporarily (in no case in excess of 24 hours) and then solely for the purpose of loading or unloading or a service call; provided, however, that each vehicle may be kept within an Owner's enclosed garage or screened behind the residence's front elevation. No vehicles of any kind shall be parked on any portion of the Property while such vehicles are in a state of disrepair or while being repaired.

**Section 5.16 – Signs:** No signs, advertising, billboards or advertising structures of any kind shall be erected, used or maintained on the Property except for the purpose of advertising for sale or rent the Property upon which it is erected, except as provided in section 6.1(d). This Section shall not be construed to limit a Member's right to place and display a sign advocating the election, appointment, or defeat of a candidate for public office or the passage or defeat of a ballot issue, as permitted by MCA 70-1-522, as amended, and as regulated by such rules and regulations that the Association may hereafter lawfully adopt.

**Section 5.17 – Garbage:** No rubbish, trash, garbage, or other waste material shall be kept or permitted on any Lot or on any Common Area. All waste shall be removed as often as reasonably necessary. Equipment for the disposal of such material shall be concealed except for the day of garbage pickup and must be removed from the street within one day of the day of garbage pickup. No part of the Property shall be used or maintained as a dumping or storage ground for rubbish, trash, garbage, old automobiles or other wastes.

**Section 5.18 - Common Area:** No Owner shall deposit debris such as lawn clippings, limbs, shrub trimmings, or garbage of any nature in the Common Area. The Common Area is to be left in its natural state, other than as reasonably required by the Association, a governing municipality, or the Declarant to access, repair, replace, or update current conditions and improvements.

**Section 5.19 – Animals:** No animals of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, and other domestic animals may be kept and raised, but not for commercial purposes. Permitted animals must be confined to the Lot of their Owner and not permitted to run at large.

**Section 5.20 – Nuisances:** No noxious or offensive activity shall be carried on or permitted upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the neighborhood.

**Section 5.21 - Rules and Regulations:** The Board of Directors may from time to time adopt, amend or terminate rules and regulations concerning the Common Area and/or actions or activities within Southside Estates that have an impact on other Owners. A copy of any such rules and regulations shall be sent to all Owners. All Owners and their family, guests and invitees shall abide by any such rules and regulations.

## **ARTICLE VI** **DECLARANT RIGHTS**

**Section 6.1 - Completion of Work and Establishment of Subdivision:** Declarant or the transferees of Declarant shall undertake the work of developing all Lots included within the Southside Estates Subdivision. The completion of that work, and the sale, rental, or other disposal of residential units is essential to the establishment and welfare of the Property as an ongoing residential community. In order that such work may be completed and the Property established as a fully-occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to:

- (a) prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from doing on any part or parts of the Property owned or controlled by Declarant or Declarant's transferees or their representatives, whatever they determine may be reasonably necessary or advisable in connection with the completion of such work;
- (b) prevent Declarant, Declarant's transferees, or the employees, contractors or subcontractors of Declarant or Declarant's transferees from constructing and maintaining on any part or parts of the Property owned or controlled by Declarant, Declarant's transferees, or their representatives, such structures as may be reasonably necessary for the completion of such work, the establishment of the Property as a residential community, and the disposition of Lots by sale, lease, or otherwise;
- (c) prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from conducting on any part or parts of the Property owned or controlled by Declarant or Declarant's transferees or their representatives the business of completing such work, of

establishing the Property as a residential community, and of disposing of Lots by sale, lease, or otherwise; or

(d) prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from maintaining such sign or signs on any of the Lots owned or controlled by any of them as may be necessary in connection with the sale, lease, or otherwise of such Lots.

As used in this section, the words "Declarant's transferees" specifically exclude purchasers of Lots improved with completed residences.

**Section 6.2 - Sales Office and Model Unit:** Declarant shall have the right to maintain a sales office and model unit in one or more of the Lots or living units which the Declarant owns. The Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and model during reasonable hours any day of the week. Declarant may assign these rights to other developers of Lots or living units on the Property.

**Section 6.3 - Unilateral Amendment by Declarant:** At any time, before or after the Period of Declarant Control, so long as Declarant owns a Lot, Declarant may unilaterally amend this Declaration (1) if such amendment is solely to comply with applicable law or correct a technical or typographical error, (2) if such amendment does not adversely alter any substantial rights of any Owner or mortgagee, or (3) in order to meet the guidelines or regulations of a mortgagor or insurer including, but not limited to, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration or any similar agency. Such amendments shall not require approval of any Owners.

#### **Section 6.4 – Expansion:**

**Section 6.4.1 - Declarant May Expand:** Declarant reserves the right, but will not be obligated to expand the effect of this Declaration to include additional property. The consent of the existing Owners, the Association or the Board of Directors of the Association will not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option.

**Section 6.4.2 - Declaration of Annexation:** Any expansion may be accomplished by recording a Declaration of Annexation and one or more supplemental plats in the records of the Clerk and Recorder of Flathead County, Montana. The Declaration of Annexation will describe the real property to be annexed, submitting it to this Declaration. Upon such annexation, each lot in the annexed property will be allocated one vote and liability for the Common Expenses equal to the liability allocated to each of the other Lots, and the proportionate voting interest and allocation of Common Expenses for the other Lots will be adjusted accordingly. Upon such annexation, each owner of a lot in the annexed property shall automatically become a member of the Association. Such Declaration of Annexation

will not require the consent of Owners, the Association, or the Board of Directors of the Association. Any such expansion will be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Upon the recordation of any such Declaration of Annexation, the definitions used in this Declaration will be expanded automatically to encompass the annexed property. Such Declaration of Annexation may add supplemental covenants peculiar to the annexed property, or delete or modify provisions of this Declaration as it applies to the annexed property. However, this Declaration may not be modified with respect to that portion of the Property already subject to this Declaration, except as provided below for amendment.

## **ARTICLE VII** **DURATION AND AMENDMENT**

**Section 7.1 - Duration of Declaration:** These covenants, conditions, 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 fifteen (15) years from the date these covenants, conditions, and restrictions are recorded, after which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years, unless the written consent of Owners holding sixty percent (60%) or more of the votes in the Association has been recorded, agreeing to change said covenants, conditions and restrictions in whole or in part.

**Section 7.2 – Amendment:** Subject to the limitations of Section 6.3 and Section 6.4, this Declaration of covenants, conditions, and restrictions, or any provision of it, may be terminated, extended, amended, or revoked as to the whole or any portion of the Property as follows:

**Section 7.2.1 - Prior to Sale of Lots:** Prior to the sale of any Lot (excluding any sale to a person or entity affiliated with Declarant), Declarant may terminate, extend, amend, or revoke this Declaration as to the whole or any portion of the Property by recording in the records of Flathead County, Montana, a document signed by the Declarant stating the action taken.

**Section 7.2.2 - After Sale of Lots but During Period of Declarant Control:** After the sale of a Lot (excluding any sale to a person or entity affiliated with Declarant) but before expiration of the Period of Declarant Control, Declarant may terminate, extend, amend, or revoke this Declaration as to the whole or any portion of the Property. A copy of the document stating the action intended to be taken by the Declarant and a notice of the Owner rights under this Section shall be mailed to each Owner by first class mail, postage prepaid, to the address of the Owner in the records of the Association. Unless written objection is received by Declarant from the Owners holding seventy-five percent (75%) or more of the votes within thirty (30) days of the mailing of the notice to the Owners, the action proposed to be taken by the

Declarant shall be considered approved and shall become final. The Declarant shall then record in the records of Flathead County, Montana, a document stating the action taken, together with a certificate certifying that notice was given to the Owners as required herein and that fewer than seventy-five percent of the Owners objected to the action.

**Section 7.2.3 - After the Period of Declarant Control:** After the Period of Declarant Control, this Declaration, or any provision of it, may be terminated, extended, amended, or revoked as to the whole or any portion of the Property by the Declarant, unilaterally, pursuant to the provisions of Section 6.3. In addition, after the Period of Declarant Control, this Declaration, or any provision of it, may be terminated, extended, amended, or revoked as to the whole or any portion of the Property upon the written consent of Owners holding sixty percent (60%) or more of the votes in the Association. The amendment will be immediately effective upon the recording in the records of Flathead County, Montana, of a copy of the document together with a certificate signed by an officer of the Association stating that the required number of consents of Owners were obtained.

**Section 7.2.4 - Declarant Approval:** No termination, extension, or amendment of this Declaration will be effective in any event during the Period of Declarant Control unless the written approval of Declarant is first obtained.

Nothing in this section should be construed to permit the abandonment of the Association's responsibility for the maintenance of Common Area identified herein.

## ARTICLE VIII MISCELLANEOUS

**Section 8.1 - Effect of Provisions of Declaration:** Each provision contained in this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision contained in this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision contained in this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within Southside Estates Subdivision is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within Southside Estates Subdivision by an Owner or the Association, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner or Association, as the case may be, and as a personal covenant, shall be binding on such Owner or Association and such Owner's or Association's respective heirs, personal representatives, successors and assigns; (c) shall be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to each parcel of real property within Southside Estates Subdivision, including property that may hereafter become part of Southside Estates Subdivision; and (d) shall be deemed a covenant, obligation

and restriction secured by a lien, binding, burdening and encumbering the title to each parcel of real property within Southside Estates Subdivision, which lien with respect to any Lot shall be deemed a lien in favor of Declarant and/or the Association.

**Section 8.2 – Enforcement and Remedies:** The Declarant, the Association, and/or any Owner or Owners of Lots shall have the right to enforce all covenants, conditions, and restrictions now or hereafter imposed by the provisions of this Declaration. Any enforcement action may be by a proceeding for such relief as may be provided at law or in equity, including but not limited to a temporary or permanent injunction and/or a suit or action to recover damages. Each provision contained in this Declaration shall be enforceable by the Association or by any Owner who has first made written demand on the Association to enforce such provision and 30 days have lapsed without appropriate action having been taken by the Association. Any enforcement action may be by a proceeding for such relief as may be provided at law or in equity, including but not limited to a temporary or permanent injunction and/or a suit or action to recover damages.

**Section 8.3 - Limited Liability:** Neither the Declarant, the Association, or their respective officers, directors, employees or agents shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

**Section 8.4 – Headings:** The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of this Declaration.

**Section 8.5 - No Waiver:** Failure to enforce any provision contained in this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

**Section 8.6 - Attorney's Fees:** In the event of a dispute arising under any provision contained in this Declaration, the prevailing party shall be entitled to its reasonable costs and attorney's fees incurred. It is expressly understood by any person purchasing a Lot in this Property, that if an action is successfully brought against an Owner for a violation of the terms of this Declaration, that a reasonable attorney's fee shall be assessed against the Owner in addition to costs and any other damages.

**Section 8.7 – Severability:** Invalidity or unenforceability of any provision contained in this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

**Section 8.8 - Limited Liability:** Neither the Declarant, the Association, or their respective officers, directors, employees, or agents shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

**Section 8.9 – Agricultural Activities:** Lot owners are advised that agricultural activities are conducted in the immediate vicinity which may produce odors, noise, dust, and involve the utilization of herbicides and pesticides, which can have an affect on the Property. Adjacent farms will not be liable for odors, noise, herbicide and pesticide sprays that are necessary in good agricultural operations, provided such sprays are applied in conformance with approved standards by licensed applicators. Adjacent farms will not be liable for adverse ground water conditions caused by agricultural practices, including normal irrigation.

The acquisition of Property in the Southside Estate Subdivision is a waiver of any claims for normal agricultural activities conducted on adjacent or nearby properties. Any Owner of a Lot within the Southside Estate Subdivision recognizes that there are agricultural activities on adjoining or nearby land and relinquishes all rights for relief from such activity. Each Owner specifically reserves his or her right to seek compensation or injunctive relief for injuries to person or property caused by any dangerous instrumentality or toxic waste or for negligent or intentional actions by those using the agricultural property.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

*(Signature of Declarant)*

TEAM Development, LLC

By, Brian Wells, its Managing Member

STATE OF MONTANA        )  
                                  ) ss  
County of FLATHEAD        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned, a Notary Public for the State of Montana, personally appeared BRIAN WELLS, known to me to be the person whose name is subscribed to the within 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 in this certificate last above written.

Notary Public for the State of Montana  
Residing at:  
My commission expires: