

**Declaration of Covenants, Conditions, & Restrictions  
for Discovery Vista, LLC.**

This Declaration, made on the date hereinafter set forth by Discovery Vista, LLC, a Montana Limited Liability Company hereinafter referred to as Declarant.

Witnesseth:

Whereas, Declarant is the owner of certain property in the county of Park, State of Montana, which is more particularly described as:

Parcels 1 and 2 of Certificate of Survey 2015AG of record and on file with the Park County Clerk and Recorder's Office, located within the SE ¼ of Section 15, T2S, R9E, City of Livingston, Park County, Montana, and developed as Discovery Vista Phases 1, 2 and 3..

Now THEREFORE, Declarant hereby declares that all tracts of record created within the properties described above, and any additional phases developed under this same name, shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of this community, and which shall run with the real property and be binding on all parties having any right, title or interest in any of the tracts of record created by Discovery Vista, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**Article I – Definitions**

*Section 1. "Association"* shall mean and refer to Discovery Vista Homeowners Association, Inc. its successors and assigns.

*Section 2. "Owner"* Shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the properties. Owner shall also include the purchaser under contract for deed.

*Section 3. "Property" or "Properties"* shall mean and refer to that certain real property herein before described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

*Section 4. "Lot"* shall mean and refer to any plat of land shown upon any recorded subdivision of the properties.

*Section 5. "Declarant"* shall mean and refer to Discovery Vista, LLC.

*Section 6 "Mobile Home/House trailer"* shall mean and refer to a building as defined in Montana Code Annotated 15-24-201 (2006): "House trailer means a form of housing designed to be moved from one place to another by an independent power connected to the house trailer, which is either 8 feet wide or less or 45 feet long or less... Mobile Home means forms of housing know as 'trailers', 'house trailers', or 'trailer coaches' exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent

power connected to the mobile home or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.”

Additionally, and for the purposes of these Covenants, a mobile home or housetrailer is also defined as a vehicle built and transportable upon a single chassis comprised of a frame and wheels which is designed to be moved from place to place, to be used as a single family dwelling, and is taxed and classified by the State of Montana as a motor vehicle (15-24-201(3), MCA (2006) and 61-1-501, MCA (2006), respectively.) For the purposes of these covenants, a home taxed and classified as a mobile home at the time of ties construction and sale remains a mobile home, even if subsequently placed on a permanent foundation, or build onto after the fact.

*Section 7 “Modular/Manufactured Home”* shall mean and refer to a building as defined in 15-25-201, MCA (2006): “Manufactured home means a residential dwelling built in a factory in accordance with United State department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards. A manufactured home does not include a mobile home or a housetrailer.” Additionally, and for the purposes of these Covenants, a modular or manufactured home is further defined as a single family dwelling comprised of two or more sections, built off-site in a factory and transported separately to the site where they are then assembled on site.”

*Section 8 “Recreational Vehicle”* shall mean and refer to a vehicle designed for use as a temporary dwelling for travel, recreation and vacation use.”

## **Article II – Regular and Special Assessments and Fines**

*Section 1. Creation of the Lien for Personal Obligation of Assessments.* The Owner of any Lot, is deemed to covenant and agree to pay to the Association (a) annual assessments or charges and (b) special assessments for capital improvements, 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 the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney’s fees, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due.

*Section 2. Purpose of Assessments.* The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the community and to maintain the private parks and community amenities.

*Section 3. Annual Assessment.* Until July 1 of the year immediately following the conveyance of the first lot in Phase 1 to an Owner, the maximum annual assessment shall be \$180.00 per lot. The assessment charged to the purchaser will be the pro-rated amount calculated from July 1 of the assessment period to the date of closing. Dues are assessed the same on vacant lots as on occupied

properties. Notwithstanding any other provision herein, no lot owned by Declarant shall be subject to annual or other special assessments unless and until such lot has been sold or transferred to another party. Thereafter, annual assessments shall be determined by the Discovery Vista Homeowner's Association's Board of Directors,

*Section 4. Maximum Increase of Annual Assessments.* The maximum annual assessment may not be increased each year more than ten percent (10%) above the maximum assessment for the previous year without the vote or written assent of sixty (60%) of the membership.

*Section 5. Notice for any Action Authorized Under Section 3 or 4.* Any action authorized under section 3 or 4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than fifteen (15) days in advance of the meeting.

*Section 6. Uniform Rate of Assessment.* Both annual and special assessments must be fixed at a uniform rate for all deeded lots

*Section 7. Due Date of Annual Assessments.* The annual assessments provided herein shall be levied on the first day of July of each year.

*Section 8. Date to Fix the Amount and Notice of Annual Assessments.* The Board of Directors shall fix the amount of the annual assessment against each deeded lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on specific lot have been paid.

*Section 9. Delinquent Dues and Assessments.* If any dues or assessments are delinquent for a period for two months or more, the Association may mail to the owner a notice of delinquency. If any dues or assessments are delinquent for a period of four months or more, the Association shall be entitled to file a lien against the owner's property, provided said Association has given notice of delinquency 30 days in advance which shall be filed in accordance with the provisions of Title 71, Chapter 3, MCA. The Association shall also have all rights and remedies as provided herein.

*Section 10. Fines.* The Association has the right to assess any Owner a fine for failure to comply with these covenants. The Association must make such reasonable rules and bylaws and adopt such procedures as it deems necessary to carry out the fining process, which rules, bylaws and procedures must be consistent with the provisions of these covenants.

### **Article III – Sidewalks**

Concrete sidewalk five feet wide shall be constructed to city standards within the right-of-way across the full width of the lot by the Owner at the time the house is constructed on the individual lot. The sidewalk shall be located five feet clear

distance from the back face of the curb and gutter. Upon the third anniversary of recordation of the final plat for each phase, all lot owners who have not constructed the sidewalk on their lots, regardless of whether or not a house has been constructed on the lot, shall construct the sidewalk. In the event that a lot owner fails to comply with this requirement, the Association shall serve notice upon the owners informing them of this requirement. If the owners do not respond within thirty (30) days of the date of this notice, the Association may hire the contractor and pay to have the sidewalk installed. The costs incurred by the Association shall be added to and become a part of the assessment to which such lot is subject.

#### **Article IV – Maintenance**

*Section 1. Lot Maintenance.* Owners are required to establish a lawn or other suitable landscaping for their lot. They shall also mow, irrigate, control noxious weeds and otherwise maintain their lot so that the landscaping does not detract from the general appearance of the community in the opinion of the Architectural Control Committee. To reduce the potential for groundwater contamination, the amount and type of chemicals applied to lawns and landscaping shall be restricted to acceptable standards.

Prior to construction it is the responsibility of the lot owners to maintain their lot. Weeds are to be controlled and mowed often enough to keep the lot from looking unkempt. The city of Livingston requires that noxious weeds are to be controlled as per the weed control plan filed with the City as a condition of Final Plat approval of Discovery Vista Subdivision. In the event that a lot owner fails to maintain their lot or comply with this requirement, the Association shall serve notice upon the owners informing them of this requirement. If a lot owner or owners does/do not respond within fourteen (14) days of the date of this notice, the Association will hire a contractor and pay to have the weeds controlled and/or the weeds and grass mowed. The costs incurred by the Association shall be added to and become a part of the assessment to which such lot is subject.

*Section 2. Park Maintenance.* It is the responsibility of the Discovery Vista Property Owner's Association to maintain the private parks along with playground equipment and stormwater catch basin structures and connected culverts located within the parks. The private parks consist of the nearly 1 acre park in the center of the subdivision along with the linear parks leading to it and to the city park located to the north.

*Section 3. Maintenance of Stormwater Runoff Detention Cells.* The association is also responsible for annual maintenance of the private common areas running approximately 25 feet wide beyond both sides of the seasonal creek (known as the Voyich Irrigation Ditch) which runs west to east through Discovery Vista. The dikes and siphons constructed in these linear areas are designed to detain stormwater within individual detention cells and convey it to the stormwater drainage system. Maintenance shall include but not be limited to removal of sediment that has accumulated a maximum of 12 inches deep above the

original design ground elevation, control of noxious weeds, periodic mowing, litter control, removal of debris caught in the siphons, and general maintenance to assure proper operation.

#### **Article V – Utilities**

*Section 1. Refuse Disposal.* No part of the above described property shall be used or maintained as a dumping ground for rubbish, trash, or garbage. All waste shall be kept in sanitary containers and out of site of the street except on garbage pick-up day. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall comply with all applicable laws and regulations. No trash, garbage or other waste shall be disposed of by burning on any building site or adjacent lands, except for construction debris which may be burned upon obtaining the proper permits from the City of Livingston.

*Section 2. Utility Easements.* Each lot in the above-described property shall be subject to an easement for the purposes of constructing, operating, maintaining, enlarging, reducing, removing, layering or relaying lines and related facilities and equipment for utilities including but not limited to those providing electrical power, potable water, sanitary sewer, natural gas and communication / television. At no time will patios, barbecues or other permanent structures be erected upon any utility easement within the exterior boundary of a lot. Fencing of a permanent nature shall be permitted only if it is of a type that is easily and quickly removed in the form of panels, gates or other similar units of construction.

#### **Article VI – Architectural Control Committee**

*Section 1. Structure, Power, Duties.* The Architectural Control Committee shall consist of three (3) members. So long as Declarant owns 25% or more of the lots, it will be one of the members of the Architectural Control Committee and the Declarant's term will be automatically renewed until Declarant owns less than 25% of the lots. The first Architectural Control Committee shall be selected by the Board of Directors. Thereafter, the Architectural Control Committee shall be nominated and elected by the Architectural Control Committee and ratified by the board of Directors of the Association. The Architectural Control Committee may make such reasonable rules and bylaws and adopt such procedures as it deems necessary to carry out its functions, which rules, bylaws and procedures must be consistent with the provisions of these covenants.

*Section 2. Terms and Members.* Architectural Control Committee member terms expire in October and the Architectural Control Committee shall nominate and elect candidates for the expiring terms at the next meeting following a member's terms expiring. Resignations of any committee member shall be in writing and delivered to the Chairman of the Committee. Members who resign

prior to their term expiring shall be replaced by nomination and election by the remaining Architectural Control Committee members.

- Section 3. Qualifications.* The minimum requirements for nomination, election and confirmation to the Architectural Control Committee are as follows:
- a. Must be a member of the Association;
  - b. Must not be currently in violation of any covenant provisions, such violation being defined as being in receipt of a "Notice of Violation" letter from the Association Board of Directors or the Architectural Control Committee;
  - c. Must, upon election and confirmation, sign a "letter of commitment" stating electees promise to uphold the recorded covenants and enforce same;
  - d. Must attend regularly scheduled committee meetings.
- Section 4. Meetings.* Meetings of the Architectural Control Committee shall be held on a schedule conducive to completing the work of reviewing projects in the timely manner. Since the review process is variable, depending on the timing and completeness of applicants submitted plans and specifications, meetings may be held on an "as needed" basis.
- Section 5. Officers.* The Architectural Control Committee shall nominate and elect a Chairman each year in October. The Chairman shall chair each meeting and be a liaison between the Architectural Control Committee and the Association Board of Directors.
- Section 6. Livingston Building Standards.* All construction must meet the standards of the Livingston Building Code and its Amendments.
- Section 7. Authority.* The Architectural Control Committee shall have the authority to reject materials, designs submitted with plans, or the plans themselves if they are not compatible with, or are inappropriate for the rest of the community. The Association, on behalf of the Architectural Control Committee, shall have the power, authority, standing and right to enforce these covenants in any court of law or in equity when it reasonably believes the same have been violated, and shall have the authority to revoke or suspend building approvals and/or order suspension or cessation of any construction or work in violation of these covenants or of any approvals issued by the Committee.
- Section 8. Fees.* The Architectural Control Committee may require reasonable fees to be paid with the filing of plans and specifications and the issuance of Architectural Control Committee building approvals.
- Section 9. Liability.* The Architectural Control Committee or the individual members thereof may not be held liable by 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 of building approvals, or any delays associated with such action on the part of the Committee.

*Section 10. Appeal.* If the Owner disagrees with a decision of the Architectural Control Committee, he/she may appeal the decision to the Board of Directors. The appeal must be made within thirty (30) days of the decision the Owner would like to appeal. The appeal must be sent certified mail, return receipt requested, to the Board of Directors and the Architectural Control Committee. The appeal must state what decision is being appealed and state why the Owner believes the Architectural Control Committee was in error. Once the Architectural Control Committee receives the appeal, it will have Fifteen (15) days to respond. The Committee must send a copy of the response to the Owner. The Owner, if the Owner desires, will have Fifteen (15) days to file a reply to the Architectural Control Committee's response. The Owner can waive a reply if the Owner desires. The reply or waive must be copied to the Architectural Control Committee. Within fifteen (15) days that all of the responses are submitted or waived, the Board of Directors will hold a hearing. The Board must render its decision, in writing, within Fifteen (15) days of the hearing.

#### **Article VII—Architectural Controls**

*Section 1. Review Time Frame.* The Architectural Control Committee shall have sixty (60) days from its receipt of complete plans and specifications to render a decision as to the acceptability of the submitted plans. For the purposes of calculation, the sixty (60) days will commence on the date the plans are signed for by the Architectural Control Committee and/or the Association. If incomplete or undecipherable plans are received, the Architectural Control Committee may request additional information, and in such case, the sixty (60) day time frame will begin upon receipt of the additional requested information. In the event the Architectural Control Committee fails to approve or disapprove such design, location, construction and materials, within sixty (60) days after the complete detailed plans and specifications have been received and signed for by the Architectural Control Committee and/or the Association, approval shall not be required and this Article shall be deemed to have been complied with; however, all construction approved in this manner must comply with all other provisions of these recorded covenants.

*Section 2. Land Use and Building type.* Any structure constructed in Phases 1, 2 or 3 of Discovery Vista shall be constructed as site-built single-family residential, duplex or townhouse structures to be used for residential, non-commercial purposes. No mobile homes, housetrailers or modular/manufactured homes are allowed to be placed or erected on this property. All lots in Phases 1, 2 and 3 shall be single family except lots 1-13 in Block 6 which will be duplex townhouse lots as designated by A and B. No apartments shall be allowed on the single family lots; however, a separate unit for related parties may be allowed within the home as long as it is a part of the home. The separate unit may not be used as a rental.

*Section 3. Architectural Control.* No buildings, construction, landscaping, parking, fence, wall or other improvements shall be placed, constructed, erected, repaired, restored, reconstructed, altered, remodeled, added to or maintained on any lot or area until building and site plans and specifications, and such other information as the Committee may reasonably require, (including, without being limited to building exterior elevations, colors and materials,) have been submitted to and approved by a majority of the Architectural Control Committee.

*Section 4. Temporary Structures Forbidden.* No structure of a temporary character, recreational vehicles, basement, tent, shack, garage or any other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently; however, this provision shall not be construed to prevent children's camp outs in the yard. All structures must be maintained in a reasonable manner to present a neat and attractive exterior appearance.

*Section 5. Type of Construction.* No mobile homes, housetrailer or modular/manufactured shall be allowed. All construction shall be built or assembled on the site. Previously built homes may not be moved into the subdivision.

*Section 6. Minimum Residence Requirements.* All single family dwellings shall have a minimum of 1,200 square feet of finished floor space together with at least a single-car attached or detached garage. The 1,200 square feet must be at or above grade with at least 1,000 square feet at ground level, and is excluding basements, garages, carports, porches, etc. All duplex townhouses shall have a minimum of 1,000 finished square feet in each unit and at least a single-car attached or detached garage for each unit. The townhouse units can be single level or two stories. It is the intention of this covenant to insure that all dwellings shall be of a quality workmanship and materials substantially the same as, or better than, other dwellings in the development. All plans must be approved by the Board of Directors or their assigned representatives.

*Section 7. Exterior Siding.* The exterior siding of the structure shall consist of wood, wood look-alikes or wood products, brick, stone, stucco, Dryvit or other manufactured exterior good quality materials, including insulated metal or vinyl siding. However, no sheet or panel metal siding nor cement block siding is allowed. No panel siding similar to T1-11 siding or plywood sheet siding is allowed.

*Section 8. Roofs of Structures.* The roofs shall be covered with shakes, tiles or shingles. No rolled roofing shall be allowed. Exposed aluminum or silver flashing around the chimneys or roof valleys shall not be allowed unless colored, gutters are allowed, provided the same are colored to match the trim or color of the roof. Steel galvanized gutters are not allowed. The roofs shall have a minimum pitch of 4/12. All structures shall be constructed so that the roof overhang at the eaves and gable ends are a minimum of 12 inches.



*Section 9. Foundation of Structures.* All foundations for living structures shall be constructed from masonry materials, foundations constructed from wood or other materials are expressly prohibited.

*Section 10. Colors of Structures.* The exterior colors of the structures shall be earth tones, pastels, white or wood colors. No bright or shiny colors on exterior siding shall be allowed. For example, bright oranges, royal blues, pinks, purples and the like bright colors are not allowed. Colors are to be compatible with the balance of the neighborhood.

*Section 11. Exterior of Structures.* The exterior design, style and colors of each of the outbuilding and structures on a lot shall conform to the design, style and colors of the residence. Roof fascia trim on any structure constructed on a lot shall extend downward on the roof and be visible for at least 4 inches. Visible extension of roof fascia must be securely fastened to prevent wind damage. The building should be a visual combination of forms that does not give a "box" appearance. Breaks in the roof lines and wall lines that add interest to the form and help define the design of the building are encouraged.

*Section 12. Entrances.* The main entrance to the living structures should be architecturally defined and enhanced by incorporating an entry porch or gable extending over the entrance denoting a clear sense of arrival. It shall provide weather protection and visual definition.

*Section 13. Architectural Enhancement.* Any residential structure shall contain an offset or set back in its architectural design and construction of a minimum of 2 feet between the residence and attached garage.

*Section 14. Building height.* The height of all structures shall be controlled by the zoning and other appurtenant regulations enacted by the City of Livingston except as herein described.

*Section 15. Set Backs, Building Locations.* Set backs shall be controlled by the zoning and other appurtenant regulations enacted by the City of Livingston. The front yard set back for any dwelling shall be a minimum of 25 feet. The setbacks from a side street for any dwelling shall be a minimum of 10 feet. No building shall be located nearer than 5 feet from the side lot line. For purposes of this Covenant, eaves and open porches shall be considered as part of a building.

*Section 16. Accessory Buildings.* All necessary buildings, such as garages and storage buildings shall be architecturally compatible with the residence on or being constructed on the lot.

*Section 17. Fencing.* Back yards and side yards may be fenced with wood or materials that look like wood. The front yard toward the public road shall not be fenced. Chain link fences acceptable to the Architectural Committee may be approved on a case by case basis. Fences shall be maintained in good condition and built according to the provisions in Article V, Section 2 (Easements).

*Section 18. Satellite Dishes.* In no case shall a satellite dish exceed 24" in diameter.

*Section 19. Dog Kennels.* One dog kennel per lot is allowed provided it does not exceed 10 feet by 20 feet in size, is located in the rear yard, and screened from the neighbors' view. Such kennel is to be kept in a clean and odor free condition at all times.

*Section 20. Entry/Drive Lighting.* Upon construction of each home a standard light of a design prescribed by the Architectural Control Committee shall be installed by the owner where the driveway intersects the front property line. The Owner shall be required to provide power and maintenance for the light. All outdoor lighting shall be "Night Sky Friendly" as per the City of Livingston's "Night Sky Protection Act".

*Section 21. Landscaping.* Landscaping shall be completed within twelve (12) months after the Owners' first occupancy of the residence. As part of the landscape plan the boulevard must have at least two (2) trees planted for each single family residential lot, and two (2) street trees per duplex lot (1 per living unit). At least one (1) additional tree shall be required to be planted in the front yard of each single family home. Trees prohibited by the City of Livingston and which shall not be planted in the boulevards or within twenty (20) feet of a city sidewalk include: Carolina Poplar, Canadian Poplar, Lombardi Poplar, Silver Leaf Poplar, Box Elder, Native Cottonwood trees and any other variety deemed undesirable by the City.

*Section 22. Sight Distance at Intersections.* For elimination of traffic hazards and to promote traffic safety, no fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 5 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and line connection at points 25 feet from the intersection of street lines or, in the case of rounded property corner, from the intersection of property lines extended. The sight line limitations shall apply on any lot within such distances of such intersections unless the foliage line is maintained a sufficient height to prevent obstruction of sight lines.

*Section 23. Construction Completion.* All improvements, construction, reconstruction, alterations, or remodeling requiring the approval of the Architectural Control Committee must be completed in substantial compliance with the plans and specifications initially approved by the Committee. All such construction must be completed within one (1) year from the date construction commenced.

### **Article VIII – Use Restrictions**

*Section 1. No Commercial Use.* No residence or other structure shall be used for any commercial endeavor or activity including cottage industry type business, day care, or other business type activity. **A home office is allowed provided no employees work from the home office and minimal additional traffic is created.** It is the express intent of the Declarant that the real property which is the subject of this Declaration be devoted to creating a neighborhood consisting

of residential units and preserving within the community so created a quiet, peaceful, harmonious existence between the neighbors.

*Section 2. Animals.* Dogs, cats or other household pets may be kept in reasonable numbers provided they are confined to the lot of their owner except when on a leash. Household pets may not be kept, bred or maintained for any commercial purposes. Pets cannot be allowed to become a nuisance or annoyance to neighboring property owners nor can they be allowed to wander at large or bark uncontrolled. No livestock or poultry shall be allowed.

*Section 3. Storage of Equipment.* No lot shall be used for the storage of any inoperable vehicle, machinery, or equipment. No lot shall be used for storage of any articles, vehicles, equipment, or other personal property of any quantity in excess of the immediate needs and personal use of the owner of a lot or the occupants thereof as the case may be.

*Section 4. Commercial Vehicles.* No lot shall be used for the parking or storage of any commercial trucks, large commercial vehicles or other heavy equipment, except as may be necessary during reasonable periods of construction.

*Section 5. Recreational Equipment.* All recreational vehicles, boats, and all other recreational equipment and the like shall only be parked on the lot in compliance with the applicable zoning code, but subject, nevertheless, to the limitations of Section 3 above. In no event shall such equipment be parked on roads in excess of a total of 15 days per year. In excess of the 15 days, such equipment and vehicles must be enclosed in garage or otherwise screened areas. Screening design must be approved by the Architectural Control Committee.

*Section 6. Walkways and sidewalks.* Walkways and sidewalks shall not be used by motorized vehicles.

*Section 7. Offensive Activity.*

- a. No noxious or offensive activity shall be carried on upon any portion of the above described property, nor shall anything be done thereon which may be, or may become, an annoyance to the neighborhood.
- b. No fireworks of any kind may be bought, brought into, discharged or stored on the above-described property.
- c. No firearms shall be discharged on the above-described property.
- d. Any violation of city ordinances, zoning or other regulations shall be a violation of these covenants and can be enforced by the Association or individual lot owners.

*Section 8. Irrigation Ditch (Voyich Ditch).* THE VOYICH DITCH IS HAZARDOUS, THE WATER CONTAINED THEREIN IS NOT OWNED BY DISCOVERY VISTA, AND NEITHER THE DITCH NOR THE WATER THEREIN IS TO BE USED IN ANY MANNER BY THE SUBDIVISION PROPERTY OWNERS, GUESTS, FAMILY MEMBER(S), OR LICENSEES OF THE SAME; PROVIDED HOWEVER, THE CORRIDOR ON EITHER SIDE OF THE VOYICH DITCH WILL BE USED AS A PARK AREA AND

STORM WATER DETENTION AREA FOR THE SUBDIVISION. NO USE MAY BE MADE NOR ACTIVITY CONDUCTED BY ANY PERSON WHICH WOULD DIVERT OR IMPEDE THE FLOW IN ANY WAY.

Owners and/or occupants of any lot within this community may access the common areas running approximately 25 feet wide beyond both sides of this ditch for walking and bicycle riding provided each person is attentive to the stormwater which may be present in the detention cells located within these areas. Access shall be non motorized access only except for the Voyich family while checking the ditch.

The owners or occupants of any lot shall not conduct or permit the conduct of the following activities:

- a. The discharge of any liquid, solid, or gas into or along the banks of the waterway;
- b. The polluting of waterway by release of any refuse, debris or garbage;
- c. Or the dumping of any grass or weeds into the waterway.

The use of any fertilizers or herbicides near the irrigation ditch is limited to those products specifically approved by the Park County Agricultural Extension Agent for use near open streams and ditches. Herbicides for weed control within 25 feet of the ditch must be used only by licensed applicators under contract to the association. The association shall be responsible for the application of fertilizers in this area.

By agreement with the Voyich Family, the Discovery Vista Homeowners Association has agreed to maintain the irrigation ditch, except that the Voyich family has the right to access the ditch through the easement at any time and conduct whatever maintenance or cleaning they feel necessary. Routine maintenance of this ditch will be conducted by the Discovery Vista Homeowners Association and by the Voyich family or persons they specifically authorize, and may involve removal of sediments and placement of spoils along the ditch banks. The removal of said sediment piles will be the responsibility of the Discovery Vista Home Owners Association.

*Section 9. Signs.* No sign of any kind shall be displayed to the public view on any lot except one sign of not more than six square feet advertising the property for sale or rent, or such signs used by a builder to advertise the property during the construction and sales period. Declarant shall be allowed to maintain subdivision information signs until all lots are sold. Entry signs displaying the subdivision name are not limited in size by this paragraph.

*Section 10. Mining Operations.* No oil or gas drilling, development operations, oil refining, quarrying or mining operations shall be permitted on any lot.

## **Article IX. General Provisions**

*Section 1. Lot Splitting and Consolidation.* The following provisions shall apply to the lots created by any phase of Discovery Vista

- a. Two or more lots within Discovery Vista may be combined to result in one larger lot provided consolidation meets all applicable City and State regulations, and that notice of intention to consolidate such lots is filed with the Architectural Control Committee. The resulting consolidated lot would thereafter become one building site, and such site would be subjected to these covenants the same as any single lot originally created, except for the purpose of levying and collecting assessments. The Architectural Control Committee could consider the approval of one guest house on two consolidated lots. Additional guest houses could be considered for approval on a lot resulting from consolidation of three or more lots.
- b. No residential lot within Discovery Vista shall be split, divided or subdivided. The realignment of a common boundary between contiguous lots could be used provided the areas of resulting lots are not smaller than the original lots created by Declarant.
- c. Any change in lot configuration shall be approved by the Architectural Control Committee and all governmental authorities having jurisdiction at the time the change is proposed.

*Section 2. Effects of Covenants on Mortgage.* A breach of any of the foregoing provisions, conditions, restrictions or covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value on any lot and any improvements thereon. In addition, said provisions, conditions, restrictions and covenants shall be binding upon and effective against any owner thereof whose title thereto was acquired by foreclosure, trustee sale or otherwise.

*Section 3. Membership.* All Owners are bound by these covenants and must become members of the homeowner's association. Membership in the homeowner's association is a mandatory requirement of owning a lot.

*Section 4. Time When Association Will have the Power to Enforce These Covenants and all Other Duties Under These Covenants.* When the Declarant formally files the Articles of Incorporation for the Association and By-laws are adopted for the Association, the power of enforcing these covenants and all of Declarant's other duties under these covenants will transfer to the Association.

*Section 5. Enforcement.*

- a. These covenants shall be enforced by the Association. The Association shall be empowered and authorized, solely at their respective options, to establish committees and to delegate to them authority and duty to enforce these covenants. In all cases and by whomsoever undertaken the enforcement of the covenants shall be

conducted in a manner fair and reasonable and shall provide any alleged violator of any covenant fair opportunity to be heard after adequate notice and to impartially adjudge as to any alleged violation.

- b. In any violation shall be found to exist pursuant to the procedures established under the above constraints, the violator shall be given fourteen (14) days after notice to correct the violation, failing which, the Association, as the case may be, shall have full authority to enter the tract of the violator and correct the defect, if that is possible, or otherwise undo the violation, all at the expense of the violator. This period may be extended by the Association upon written request receive within fourteen (14) days after notice. The Association may, at its discretion, develop, or authorize the Architectural Control Committee to develop additional procedures, which the Architectural Control Committee will follow in identifying and correcting violations and to assist it with the process of prioritizing its enforcement actions.
- c. The Cost of correcting the defect or undoing the violation, if undertaken by the Association, shall constitute a lien against the tract and/or the grantees interest therein, such lien to be enforceable by sale under the laws of the State of Montana. The violator in addition shall be liable for all costs and reasonable attorney's fees incurred in enforcing the provisions of this Article, and in giving notice of violation.

*Section 6. Liability.* The Board of Directors, the Architectural Control Committee, Officers, employees and volunteers of the Association, being a Non-Profit corporation organized under Montana law, are subject to the protections from personal liability as set forth in the Montana Code Annotated, including the provision of Title 35 Chapter 2. Furthermore, these individuals shall not be held liable to any person for damage which may result from the Architectural Control Committee's actions 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 construction approval, or any delays associated with such action on the part of the Architectural Control Committee.

*Section 7. Persons Affected.* The covenants shall inure to the benefit of and shall govern all persons or entities who have or shall purchase or contract to purchase or otherwise become a purchaser or grantee of any of the lands and shall be binding upon their respective heirs, executors, personal representatives, administrators, successors in interest and assigns as well as all persons occupying or using said lands as lessees, guests, employees, or otherwise under authority or permission of said purchasers or grantees.

*Section 8. Severability.* Invalidation of any of these covenants by a judgment or a court order shall in no way affect any of the other provisions, but they shall remain in full force and effect.

*Section 9. Amendment.* The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the owners of not less than sixty percent (60%) of the lots, each lot being entitled to one (1) vote. Notwithstanding the above, until 75% of the lots are sold or five years from the date hereof (whichever comes first), the Declarant may amend the covenants in its sole discretion.

*Section 10. No Waiver.* The failure of the Board or its agents to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Board or its agent of the payment of any assessment from an owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and duly signed by or on behalf of the Board.

*Section 11. Attorney's Fees* In the event an arbitration, suit or action is brought by any party under these covenants, the by-laws, a Board of Director's resolution to enforce any of its terms, or in any appeal therefrom, the Association shall be entitled to reasonable attorneys fees to be fixed by the arbitrator, trial court, and/or appellate court.

*Section 12. Titles and Captions.* All article, section and paragraph titles or captions contained in these Covenants are for convenience only and shall not be deemed part of the context nor affect the interpretation of these Covenants.

*Section 13. Variances.* The Architectural Control Committee may allow reasonable variances and adjustments of the foregoing covenants, conditions and restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the covenants contained herein, or to grant variances for the purpose of enhancing or protecting views, utilizing a lot to better advantage, reducing or preventing the removal of trees, and enhancing the placement of improvements on the property, provided this may be done in conformity with the intent and purpose thereof, and also provided in every instance that such grants or adjustments shall not be materially detrimental or injurious to other property or improvements in the neighborhood. Notwithstanding the foregoing provision, no variance shall be allowed which has the effect of creating additional lots.

Any variances or adjustments of these conditions, covenants and restrictions granted by the Architectural Control Committee, or any acquiescence or failure to enforce any violation of the conditions and restrictions herein, shall not be

deemed to be a waiver of any of the conditions and restrictions in any other instance.

Section 14. The covenants and restrictions of this Declaration shall run with and be binding upon the land, and shall inure to the benefit of and be enforceable by the Discovery Vista Home Owners Association and the owners of any lot subject to this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal the 29 day of November, 2007.

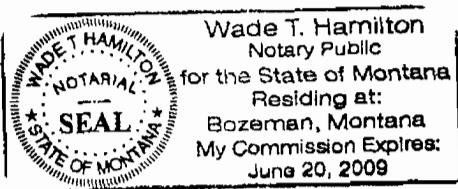
DISCOVERY VISTA, LLC.

BY: [Signature]  
Lloyd N. Mandeville, Managing Partner

STATE OF MONTANA )  
:SS  
COUNTY OF GALLATIN)

On this 29 day of November, 2007, before me, a Notary Public for the State of Montana, personally appeared LLOYD N. known to me to be a Managing Partner, of DISCOVERY VISTA, LLC., a Montana Limited Liability Corporation, and acknowledged to me he executed the same pursuant to the power and authority vested in him.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal as of the day and year first above written.



[Signature]  
Notary Public for the State of Montana  
Residing at:  
My Commission Expires: \_\_\_\_\_

CIS 2015 AG