

BY-LAWS

OF

WYLIE CREEK ESTATES SUBDIVISION, PHASE I

HOMEOWNER'S ASSOCIATION

1. PURPOSE AND APPLICATION

These By-Laws are and shall be the By-Laws of the Wylie Creek Estates Subdivision, Phase I Homeowner's Association. These By-Laws shall govern and control the administration of the Wylie Creek Estates Subdivision Phase I, hereinafter referred to as Wylie Creek Estates and the Wylie Creek Estates Subdivision, Phase I Protective Covenants and Restrictions, which are made a part hereof by reference. All lot owners, their guests and any renters or sub-lessees present and future shall have the rights and responsibilities described in these By-Laws and shall be subject to the provisions thereof.

2. MEMBERSHIP

Persons owning a lot in the Wylie Creek Estates shall be a member of the Homeowners' Association, hereafter referred to as the "Homeowners' Association" or "Association", as established in the initial filing for the Subdivision. Membership begins concurrently with the acquisition of an ownership interest in a lot and terminates at the time such ownership interest is terminated. Such termination shall not relieve any owner of liability for obligations incurred while a member of the Association; further membership in the Association does not in any way negate or impair any owner's legal remedies, right to bring legal action, or defenses to any and all actions involving the Association, other lot owners, or the management which may arise from or be incidents of ownership.

3. OBLIGATIONS

Each Owner shall be obligated to comply with these By-Laws, the Articles of Incorporation (if any), and the Protective Covenants of Wylie Creek Estates, Gallatin County, Montana, of which this subdivision is a part (which covenants are incorporated herein as if set forth below in their entirety). Such obligation shall include, but not be limited to, the paying of assessments to the Association. Failure of any lot owner to abide by these By-Laws and all rules made pursuant thereto, the Covenants, and the State of Montana, shall be grounds for appropriate legal action by the Homeowners' Association or by an aggrieved lot owner against such non-complying owner.

4. MEETINGS AND VOTING

A. Regular Meetings: There shall be a regular meeting of the Association annually on such date as determined by the Board of Directors of the Association and properly announced by the Board. The first meeting of the Association shall take place not more than 1 year following the date of signing these By-Laws, if not sooner held.

B. Special Meetings: Pursuant to these By-Laws, the Association may at any time hold special meetings. Such special meetings may be called on the initiative of the President of the Association, or a signed request of the Manager, or a petition signed by 25% of the total votes of the lot owners. Notice of any special meetings must specify the reason for such meeting and the matters to be raised. Only matters set forth in the petition or request may be brought before such meeting unless 75% of the votes present agrees otherwise.

C. Notice: Notice of all meetings, regular or special shall be mailed by the Association's Secretary to every lot owner on request at their address of record at least ten (10) days prior to the time for holding such meeting. Such notices shall specify the date, time and place of the meeting and shall make provision to allow for the voting of each lot owner's interest by proxy at the discretion of the owner. The mailing of a notice to the last known address of a lot owner in the manner provided in its paragraph or the personal delivery of such notice by the Secretary of the Association shall be considered as notice served. The lot owners shall have the responsibility of keeping the Association notified of their current addresses.

D. Quorum: No Homeowners' Association meeting, regular or special shall be conveyed to conduct business unless a quorum is present in person or by proxy. A quorum shall consist of at least twenty percent (20%) of the total votes of the lot owners. At any time, during any meeting that a quorum is not present, such meeting shall be adjourned forthwith.

E. Director Meeting: The Board of Directors shall have an annual meeting to elect officers and to take care of such annual business as preparing a budget and other matters. The President or a majority of the Board of Directors may call a special notice or upon 5 days oral or telephone notice. Notice of any meeting may be waived in writing. The Directors shall act by a majority vote.

## 5. VOTING INTEREST

Each lot owner at any Association meeting shall have one vote for each lot owned in the Subdivision. If there are more than one owner for a lot, such owners shall decide among themselves how to vote or otherwise exercise or represent the lot owners' interest in a lot.

Whenever a quorum is present at a meeting of the Association, those present may do any and all acts they are empowered to do unless specific provision of these By-Laws, the Covenants, or the laws of the State of Montana direct otherwise.

6. BOARD OF DIRECTORS

The governance of the Wylie Creek Estates shall be by a Board of Directors elected from among the lot owners. Such Board shall have all powers and responsibilities attended to the general administration and control of the subdivision. Additionally, the Board shall have the authority necessary to carry into effect the powers and duties specified by these By-Laws.

7. OFFICERS OF THE BOARD OF DIRECTORS

The First Board shall consist of Richard E. Thomson and Linda Rabel. Thereafter on the date of the first meeting of the Homeowners' Association, the Association shall elect from its membership a Board of Directors who shall consist of a number set by the members, not more than five nor less than three and shall include a President, Secretary, and Treasurer. The manner of election of the Board shall be as follows: one or more members shall be nominated for each vacancy of Director. The members shall have one vote per lot for each Director; the three members receiving the most votes for each office shall be elected. The Directors shall elect the officers.

A. President. The President shall preside at all meetings of the Association and meetings of the Board and shall have such other powers and duties as are provided in the Declaration, these By-Laws or by law and as are ordinarily exercised by the presiding officer of an association, including the appointment of committees from among the Owners, and as may be delegated to him by the Board or the Association from time to time.

B. Secretary: The Secretary shall record the proceedings of the meetings of the Board and meetings of the Association, shall keep the records of the Board and of the Association and shall have such other powers and duties as may be delegated to him or her by the Board of the Association from time to time.

C. Treasurer: The Treasurer shall be responsible for the funds of the Association and shall be responsible for keeping and having kept full and accurate financial records and books of account showing all receipts and disbursements of the Association and any other financial data required by the Board. He or she shall be responsible for the deposit of all funds in the name of the Association in such depositories as may be designated by the Board from time to time and shall have such powers and duties as may be delegated to him or her by the Board from time to time. The Board may delegate such of the Treasurer's powers and duties to a manager as it deems advisable.

8. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

The Board of Directors shall have the following powers and duties:

- a. To call annual meetings of the Association and give due notice thereof.
- b. To conduct elections of the Board.
- c. To enforce the provisions of the Articles of Incorporation (if any), the By-Laws, and the Protective Covenants of Wylie Creek Estates by appropriate action.
- d. To promulgate and adopt rules and regulations for the use of the common elements and for the occupancy of the lots so as to not interfere with the peace and quiet of all the residents. Such rules must be approved by seventy-five percent (75%) of the total votes of the lot owners voting in person or by proxy at any regular or special meeting of the Association, provided such rules are mailed to the last known address of such owner at least ten days prior to such meeting at which the rules are to be voted upon.
- e. The Board may provide for the management of the Wylie Creek Estates by hiring or contracting with suitable and capable management personnel for the day-to-day operation, maintenance, upkeep and repair of the subdivision facilities.
- f. To levy assessments as allowed by the Covenants, these By-Laws, and the State of Montana, and to provide the collection, expenditure and accounting of said assessments.
- g. To collect the assessments for the Homeowners' Association.
- h. To pay for the expenses of the maintenance, repair, and upkeep of the parks and roads within the subdivision and to approve payment vouchers, either at regular or special meetings.
- i. To delegate authority to the manager for the conduct of subdivision business, to carry out the duties and powers of the Board; however, such authority shall be precisely defined with

ultimate authority at all times residing in the Board of Directors.

- j. To provide a means of hearing grievances and foreclosure proceedings of lot owners and to observe all due process requirements imposed upon homeowners' association for subdivisions.
- k. To meet at regularly scheduled times and hold such meetings open to all lot owners or their agents.
- l. To prepare an annual budget for the subdivision in order to determine the amount of the assessments payable by lot owners, to meet the expenses, and to allocate and assess such charges among the lot owners for their pro-rata share of the budget each year, and to submit such budget to the lot owners on or before the date of the annual meeting.
- m. To levy and collect special assessments whenever, in the opinion of the Board, it is necessary to do so in order to meet increased operating or maintenance expenses, costs, or additional capital expenses, or because of emergencies.
- n. To file liens and to foreclose liens and to otherwise take appropriate legal action to collect any delinquent assessments, payments of amounts due from lot owners or from any person or persons owing money to the subdivision, and to levy a penalty and to charge interest up to the legal rate on unpaid amounts due and owing.
- o. To defend in the name of the Association any and all lawsuits wherein the Wylie Creek Subdivision is a party defendant.
- p. To enter into contracts with third parties to carry out the duties set forth, for and in behalf of the Board and the Association.
- q. To establish a bank account for the Wylie Creek Estates and to keep therein all funds of the Association. Withdrawal of monies from such accounts shall only be by checks signed by such persons as are authorized by the Board of Directors.

- r. In general, to act for and to carry on the administration and affairs of the Association as authorized and prescribed by the Covenants and do all of those things which are necessary and reasonable in order to carry out the governance and operation of the subdivision.
- s. To arrange, keep, maintain and renew adequate liability insurance for the Association.
- t. To carry out the duties and responsibilities of the Board in all other matters as may be authorized, needed or required by the Covenants.
- u. To allow first lienholder to inspect Association and Board records upon proper notice and during reasonable business hours.
- v. To serve as the Architectural Committee of the Homeowners' Association or to appoint members to such Committee and to carry out the duties thereof as described in the Wylie Creek Protective Covenants and Restrictions.

#### 9. VACANCIES AND REMOVAL

Should a vacancy occur on the Board of Directors, the remaining Board, subject to the exception described below, shall appoint a member of the Association to serve for the unexpired term. Such vacancy shall be filled no later than the next regular meeting of the Association, the Association may fill such vacancy.

At any regular or special meeting of the Association, any member of the Board may be removed by a majority of the votes at such meeting. Such vacancy shall be filled by the Association. Such removal matter must be announced in the notice of such regular or special meeting. The personal delivery of such notice by the Secretary of the Association shall be considered notice served.

#### 10. COMPENSATION

No member of the Board of Directors shall receive any compensation for acting as such, except to be retained for approved expenses incurred in attending Board meetings or carrying out Board functions. Nothing herein however, shall be construed to preclude compensation being paid to managers who are hired by the Board.

#### 11. LIABILITY OF MEMBERS OF BOARD OF DIRECTORS

No member of the Board shall be liable to the Association or any of the members or lot owners or any third party for harm,

injury, loss or damage suffered because of any action taken or omitted to be taken by any member of the Board serving as Board member in good faith if the Board member:

- a. exercised and used the same degree of care and skill as a prudent man or woman would have exercised or used under the circumstances in the conduct of his own affairs; or
- b. took or did not take action in reliance upon advise of counsel or upon statements or information of other lot owners or employees of the Association which he has reasonable grounds to believe.

## 12. MANAGEMENT AND BUDGET

A manager may be appointed and/or removed by the Board of Directors. The manager of any member of the Board or Association handling Association funds or having power to withdraw or spend such funds shall be bonded, and shall have maintained records of the financial affairs of the subdivision. Such records shall also detail all assessments made by the Association and the status of payments of said assessments by all lot owners. All records shall be made available for examination during normal business hours to any lot owner or his or her assigned representative. All functions and duties herein provided for the manager may be performed by the Board, or the Chairman, if the Board should decide not to have a manager.

A. The records and expenditures of the Association shall be under the direction of the Board or the manager and include a provision for:

1. Current Expenses: Which shall include all receipts and expenditures to be made within the year for which the budget is made, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserve or to betterment. The balance in this fund to reduce the assessments for current expenses for the succeeding year.
2. Reserve for Deferred Maintenance: Which shall include funds for maintenance and items which occur less frequently than annually.
3. Reserve for Replacement: Which shall include funds for repair or replacement required because of damage, depreciation or obsolescence.

4. Betterment: Which shall include the funds to be used for capital expenditures for additional improvements or additional personal property which shall be a part of the common elements.

B. The manager, if any, shall prepare and submit to the Board a budget, or the Board must prepare a budget for each calendar year. The budget shall include the estimated funds required to carry out the functions of the Association, including a reserve for contingencies, to pay for services and materials furnished to the Association, and to provide and maintain funds for the foregoing accounts according to the good accounting practices.

Copies of the budget and proposed assessments shall be transmitted to each member, on or before the date of the annual meeting of the Homeowners' Association preceding the year for which the budget is made. If the budget is subsequently amended, a copy of the amended budget shall be furnished to each member. The budget shall be amended if necessary and approved by a majority of the total votes of the members voting in person or by proxy at the annual meeting.

C. A financial report of the accounts of the Association shall be made annually by an accountant, and a copy of the report shall be furnished to each member at the annual meeting.

The Board or the manager shall generally operate and manage the subdivision for and on behalf of the Owners and shall have such other powers and authority as the members may designate. If there is no manager or if the manager resigns, is terminated or his contract expires and a successor is not chosen, the Board shall perform all the duties of the manager until a manager shall be replaced.

The Secretary shall as soon as practicable after adoption, prepare a copy of these By-Laws as amended for certification by the President and Secretary of the Association. By-Laws as amended shall become effective at the time of such certification and a copy shall be mailed or delivered to each lot owner.

#### 14. ASSESSMENTS

In accordance with the Covenants and these By-Laws, each lot owner shall be assessed for the Association's expenses. Such assessment shall be collected and paid according to the terms and under the procedures more particularly set forth in the Covenants. The amounts of assessments described above and any other assessments allowed by these By-Laws, the Covenants and by the State of Montana, shall be fixed by the Board of Directors. Notice of each lot owner's assessments shall be mailed to said owner at this address of record.

# 15. FISCAL YEAR

The fiscal year of the Association shall commence on January 1 of each year and end on December 31 of each year, unless changed by the Board of Directors.

# 16. DUE PROCESS BY THE ASSOCIATION

In the event that an action is taken by the Association against any individual owner to enforce an assessment, or any part of the By-Laws or Covenants, or any rule or regulation properly adopted by the Association, said owner shall be afforded the protection of due process, including but not limited to the following:

- a. Adequate notice in writing of any default with a contingent right to cure the default.
- b. An opportunity to defend him or herself against any allegations of default.
- c. An opportunity to cross-examine witnesses.
- d. An opportunity to receive a formal hearing before an impartial forum or tribunal.
- e. To finds of fact by the formal tribunal in accordance with the evidence presented.
- f. To penalty proportionate to the offense as suspension of voting rights and a reasonable fine imposed by the Board of Directors of the Association.

# 17. MISCELLANEOUS

A. Costs and Attorney's Fees: In any proceeding arising out of an alleged default by a lot owner, the prevailing party shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be determined by the Court.

B. No Waiver of Rights: The failure of the Association or of a lot owner to enforce any right, provision, covenant or condition which may be granted by the subdivision documents, shall not constitute a waiver of the right of the Association or lot owner to enforce such right, provision, covenant or condition in the future.

C. Election of Remedies: All rights, remedies and privileges granted to the Association or a lot owner pursuant to any term, provision, covenant or condition of the subdivision documents shall be deemed cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies nor

shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such other party by the subdivision documents, or at law or in equity.

D. Surplus. Any surplus of common expense payment by lot owners over the actual expenses (including the reserve for contingencies and replacements) during a fiscal year of the Association shall be applied towards common expenses for the following year or shall be applied in any other manner which shall benefit the Association and which, on the basis of United States Federal Income Tax Law, regulations and interpretations existing from time to time, in the sole discretion of the Board, is most likely to avoid taxation of such surplus, provided that such application is consistent with the proportional interest of all the lot owners, and is not precluded by the terms of the Act, as amended from time to time.

E. Parliamentary Rules: Roberts Rules or Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Articles of Incorporation (if any), the Protective Covenants, or these By-Laws.

F. Invalidity The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance hereof, nor shall it affect the validity, enforceability, or effect of the Protective Covenants.

#### 18. THE COVENANTS

The developer has recorded the Covenants for Wylie Creek Estates. The Covenants shall govern the acts, powers, duties and responsibilities of the Association and in the event these By-Laws and Covenants are in conflict, the Covenants shall prevail.

The definition of terms set forth in the Covenants shall be applicable throughout these By-Laws and the interpretations thereof.

By virtue of these By-Laws and the Covenant, each lot owner has the right to membership in the Association and any lot owner is eligible to be elected to the Board of the Wylie Creek Estates.

The Wylie Creek Estates Subdivision, Phase I Homeowners' Association and its Board of Directors shall have the primary and final authority on all matters solely affecting the subdivision area, subject to the laws rules and regulations of the City of Belgrade, the County of Gallatin, and the State of Montana.

Richard E. Thomson  
Linda Rabel

and the undersigned record owners and the said Board hereby certify, declare and affirm the adoption of the foregoing By-Laws on the 26 day of November, 1996.

*Richard E. Thomson, by Linda Rabel  
his attorney-in-fact*

Richard E. Thomson, by Linda Rabel,  
his attorney-in-fact

STATE OF MONTANA )  
: ss.  
County of Gallatin )

On this 26<sup>th</sup> day of November, 1996, before me, a Notary Public in and for said State, personally appeared LINDA RABEL, known to me to be the person whose name is subscribed to the within instrument as attorney-in-fact of RICHARD E. THOMSON and acknowledged to me that she subscribed the name of RICHARD E. THOMSON thereto and her own name as attorney in fact.



*Kelly K. Eve*

Notary Public for the State of Montana.  
Residing at Bozeman, Montana.  
My commission expires: 10/03/00



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State of Mont., County of Gallatin. ss Filed for record November 26, 19 96  
at 2:55P M., and recorded in Book 168 of Miscellaneous page 3634  
Shelley M. Cheney Recorder. By Barbara E. Clawson Deputy  
Fee: \$66.00  
Security Title Co.