

**DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS FOR
WYLIE CREEK ESTATES SUBDIVISION, PHASE I**

These Protective Covenants and Restrictions provide for individual and community decision making. Individual decisions are limited primarily to home lots, subject to covenants and restrictions regarding architectural design and review of improvements provided for by the Design Review Guidelines, and subject to further covenants and restrictions providing for management, administration, and regulation of Wylie Creek Estates Subdivision, Phase I (Wylie Creek Estates) provided for by the Design Review Board and the Homeowners' Association.

Richard E. Thomson is the present owner in fee simple of all the property included within the boundaries of Wylie Creek Estates, as designated on the official plat on file and of record with the Clerk and Recorder of Gallatin County at Book J of Plats page 237 . The following Declaration of Protective Covenants and Restrictions for Wylie Creek Estates is hereby adopted.

ABBREVIATIONS

The following abbreviations are used in this document:

- 1) Richard E. Thomson, the owner and developer is referred to as:
Richard E. Thomson.
- 2) Wylie Creek Estates is referred to as: Wylie Creek.
- 3) Wylie Creek Design Review Board is referred to as: D.R.B.
- 4) Wylie Creek Design Review Guidelines is referred to as:
D.R.G.

Accommodation Recording Only
STC # 9160

PURPOSE

This property is a unique setting which has a high natural and scenic value. These covenants and restrictions are adopted to preserve and maintain the recreation and scenic values of the property for the benefit of the owners of individual lots as well as the surrounding communities.

PROTECTIVE COVENANTS

It is the purpose of these covenants and restrictions to preserve and protect the beautiful environment, the natural beauty, view, and surroundings of Wylie Creek, and to preserve and protect the interests and investment of the individual owners. In addition, these Protective Covenants and Restrictions are designed to conserve the natural habitat and growth of plant life, animal life, surface and underground water.

These Protective Covenants and Restrictions shall attach to and run with the land and shall constitute an equitable servitude upon the real property and every part of it, including all titles, interest and estates as may be held, conveyed, owned, claimed, devised, encumbered, used, occupied and improved. These Protective Covenants and Restrictions are declared for the benefit of the entire property and every part of it and for the benefit of each owner. They shall constitute benefits and burdens to declarants and to all persons or entities hereafter acquiring any interest in the property.

These covenants provide for the general restrictions while the D.R.G. provide adequate details in order to ensure compliance with

these covenants. The D.R.G. shall be carefully consulted and followed to ensure the requirements of these covenants are met.

DRAINFIELD SITE AND FURTHER SUBDIVISION

The site approved for the drainfield is identified for each lot and shall remain unchanged. No lot may be further subdivided.

RESIDENTIAL USE

Only one single family dwelling unit shall be allowed per lot and each home shall have at a minimum an attached or non attached double garage being at least 22 feet by 22 feet in dimension.

No commercial use may be made of any lot except that home occupations or hobby-businesses may be conducted out of a residence by the owner or tenant if the following conditions are met:

- a) the business use shall be clearly incidental and secondary to the residential use of the lot;
- b) the business use shall be entirely inside a dwelling, garage, or storage shed, including any storage of materials or equipment;
- c) the business use shall not occupy more than 400 square feet, total, of the residence, garage, and storage shed combined;
- d) no non-resident employees shall be allowed, nor shall excessive traffic, noise, or pollution generation be permitted;
- e) the business use does not constitute a nuisance to neighboring property owners.

For guidance, the following uses are examples of home occupations; the making of clothing; the giving of music lessons; service or product providers who maintain a telephone and office

within the residence but the services and products are provided and sold off the premises; the pursuit of artistic endeavors such as making of pottery, ceramics, paintings or bronzes, and the like, provided that the products are marketed and sold off the premises, and no foundries are used on the premises.

TOPOGRAPHY AND NATURAL FEATURES

HOME SITE PREPARATION MAINTENANCE AND LANDSCAPING

Each owner shall submit a landscape plan to the D.R.B. at the time the construction plans are submitted. Landscaping shall be done only as approved by the Board. All lots shall install underground sprinkler systems to provide sprinkler irrigation for the entire lot, timed to water at appropriate times and in appropriate amounts and shall plant a minimum of two (2) trees. The installation of the sprinkler system and all landscaping shall be completed in a timely fashion, and shall be fully completed within six (6) months of completion of any construction and occupancy. On each home lot, each owner shall control all noxious weeds and shall destroy them according to county standards. Re-vegetation shall be required for all disturbed areas. The owner must complete the restoration within 45 days following the construction of the residence or within such period as may be reasonably necessary as dictated by weather conditions. Trees and landscaping in park areas shall not be cut or damaged except as mandated by the D.R.B.

SIZE AND HEIGHT

Each single story residence shall contain a minimum of 1600

square feet of finished floor space above ground, exclusive of open or screened-in porches, decks, garages and carports. If the residence is a two story, there shall be a minimum of 1800 square feet of above ground finished floor space, exclusive of open or screened-in porches, decks, garages, and carports. If the residence is a tri-level or split entry the footprint of the foundation, exclusive of garage, shall be a minimum of 950 square feet and the total finished floor space above ground shall be a minimum of 1600 square feet, exclusive of open or screened-in porches, decks and carports. All measurements shall be outside perimeter measurements. Height of buildings will be will be thirty two (32) feet maximum from the natural ground surface except Lots 67-80, inclusive, which shall be a maximum of eighteen (18) feet in height. Each lot will have specific guidelines as shown in the D.R.G.

GRADING

No disturbance or change in existing character shall be undertaken except by approval of the D.R.B. Grading for building or other improvements shall be confined to a minimum so that improvements shall be tailored to the home lot rather than conforming the lot to the improvements. All grading shall be contoured into existing ground lines to avoid unnatural sharp edges. Home lot development shall accommodate proper drainage using natural channels and storm water easements. Drainage and other topographic transitions shall blend with the natural topography of the home lot. No unnatural angles or sharp lines shall be permitted. Grading and driving on drainfield areas

before, during or after constructions is not permitted by these covenants or allowed by the Montana Department of Environmental Quality and Gallatin County Environmental Health Services.

SETBACK

No building or structure shall be erected, placed, constructed, or remodeled so as to be less than twenty five (25) feet from the front lot line, less than fifteen (15) feet from the side lot lines, or less than twenty five (25) feet from the rear lot line, except that corner lots shall have a twelve (12) foot setback requirement from the side lot line contiguous to a road. In addition, improvements shall be subject to the construction setback, greenbelt buffer zone and maintenance easement along Wylie Creek and any other building restrictions or conditions shown on the subdivision plat.

No building or structure shall be erected, placed, constructed, or remodeled so as to be less than thirty (30) feet from any portion of MacDonald Creek.

ADJACENT AGRICULTURAL USES

Lot owners and residents of the subdivision are informed that adjacent uses may be agricultural. Lot owners accept and are aware that standard agricultural and farming practices can result in dust, animal odors, flies, smoke and machinery noise. Standard agricultural practices feature the use of machinery early in the morning and sometimes late into the evening.

All fences bordering agricultural lands shall be maintained by the Homeowner's Association in accordance with State Law.

CONTROL OF NOXIOUS WEEDS

Each lot owner shall be required to control all Gallatin County declared noxious weeds.

PARK MAINTENANCE

Maintenance of all park areas shall be the responsibility of the Homeowner's Association.

DESIGN AND LIMITATIONS

The design of all improvements and changes to existing natural topography shall be subject to review and approval by the D.R.B. before work is commenced. All homes, structures, improvements, and changes shall comply with the D.R.G. and these covenants.

Mobile homes, trailers, prefabricated homes, geodesic domes, and modular homes or like dwellings shall be not permitted, nor shall any buildings be moved onto the property. All owners are urged to design buildings that reflect the scenic values in keeping with the spirit of Montana and Wylie Creek.

Material composition and quality, color and shape are important in the construction of improvements. All improvements, including the dwelling unit and other improvements shall be constructed of highest quality materials and shall match other structures and improvements on the lot. The exterior siding of any structures shall consist of wood, wood look-alike products, brick, stone, stucco or other manufactured exterior good quality materials, including metal siding, commonly now or hereafter used in the State of Montana on single family residences. However, no sheet metal or panel metal siding, nor cement block siding is

allowed. No panel siding similar to T-111 siding nor plywood sheet siding is allowed. All exterior surfaces shall have minimum reflection values. Natural and earth colors and materials are encouraged. Samples of colors for the complete color scheme to be utilized shall be submitted to the D.R.B. before construction and before a change is made in the original color.

Flat roofs and A-frames are prohibited. Metal roofs are allowed if they are an earth tone, non-reflective color. Minimum pitch of roof will be 5/12 pitch. Roof top equipment may be prohibited by the D.R.B. Television and radio antennas, as well as satellite dishes and other receiving or transmitting devices, are subject to approval of the D.R.B. Satellite dishes may be no larger than two and one-half (2½) feet in diameter.

FIRE PRECAUTIONS

Each owner, with respect to such owner's lot, shall cause grass to be trimmed pursuant to the Homeowner's Association directives in order to reduce the danger of fire within the property and shall otherwise maintain the improvements and the general condition of the lot to minimize fire hazards.

Each Owner shall:

(A) Not allow any burning barrels or pits of any sort. Fireworks are not permitted on any portion of Wylie Creek Estates.

(B) Keep all chimneys free of creosote or other materials which may prove to be flammable. Catalytic converters on wood burning devices or clean burning wood stoves, subject to approval of the D.R.B. must be used. Spark arrestors must be in place on

all chimneys.

(C) Install smoke detectors in each residence.

(D) Install numbering which is clearly visible outside the residence.

(E) Keep all roads and driveways free of obstruction to ensure access by emergency vehicles. In the event of a social function at an owner's residence, owner shall require parking on one side of the driveway or road in order to provide adequate widths for access by emergency vehicles.

OUTBUILDINGS AND TEMPORARY STRUCTURES

No outbuildings shall be erected or maintained upon a home lot before the start of construction of a residence and no trailer, mobile home, basement, shack, garage or other outbuildings shall be erected upon any part of the lot for use as a temporary or permanent residence. Use and location of any construction or temporary structure shall be subject to approval by the D.R.B. Temporary structures shall be removed within thirty (30) days after completion of construction.

EXTERIOR LIGHTS

Exterior lighting shall be installed and operated only if approved in advance by the D.R.B. Mercury vapor lamps shall not be permitted and no dusk-to-dawn ranch-type yard lights shall be allowed on any lot.

CONSTRUCTION SCHEDULES

All construction, alterations or improvements shall be subject to advance approval by the D.R.B. and shall be diligently worked on

to completion and shall be completed within twelve (12) months following commencement. Any builder shall submit plans to the D.R.B. for approval which at a minimum include a site plan of the lot showing the location of all improvements, and detailed floor plans for each floor showing all dimensions of walls, windows and doors. Once approval of the plans is granted by the D.R.B. the builder must commence construction within six (6) months of approval of the plans. It is the intention of these covenants that duplicate homes shall not be constructed next to or adjacent to each other. Commencement of construction shall mean the date excavation for the foundation begins. No aspect of construction shall at any time impede, obstruct or interfere with pedestrian or vehicular traffic. No materials shall be placed or stored upon a home lot more than thirty (30) days before commencement of construction or more than thirty (30) days following completion of construction as determined by the D.R.B.

During any construction, the lot shall be cleaned up regularly and shall be maintained free of trash. The contracting owner shall be responsible to clean up wind blown debris both on and off the premises.

PARKING SPACE/DRIVEWAY/GARAGES

Home lot plans shall provide sufficient unobtrusive parking for the use of the owner and guests. Prior to or at the time of any improvements or construction on any residential lot, the owner must install at his or her expense a 20-foot wide driveway together

with a 15-inch diameter, at least 20-foot-long, 16-gauge galvanized steel culvert in such driveway. All driveways will be paved or concrete and provide a minimum of two off-street parking spaces.

No junk vehicles shall be parked on the street nor retained or parked on any lot. A junk vehicle is one which cannot be driven under its own power.

FENCES

Fences shall be approved by the D.R.B. and may only be constructed from a line parallel with the front of the house towards the back of the lot. No fences shall be constructed in any front yard. Entryway gates to building lots are not permitted.

INGRESS AND EGRESS

An Easement for general ingress and egress to each home lot and to all common areas for the general uses of all owners and their guests shall exist over all common areas, roads, and trails within Wylie Creek Estates.

ROAD AND UTILITIES ACCESS TO WYLIE CREEK ESTATES

Primary access to Wylie Creek Estates is from Love Lane and Valley Center Road. Wylie Creek Estates shall grant unto the owners of the lots within Wylie Creek Estates, a nonexclusive easement for ingress, egress and utilities as shown and delineated on the official plat of Wylie Creek Estates.

All roads within Wylie Creek Estates shall be maintained by the Homeowner's Association.

UTILITY EASEMENT

Utility easements for electricity, gas, sewer, communications,

telephone, water, television, cable communications, and other utility equipment are designated on the Wylie Creek Plat. All owners shall have the right to enter upon and excavate in such easements upon the approval of the D.R.B. Easements for ingress and egress and for utilities shall not be moved, deleted or restricted without the written approval of all the lot owners affected. Utility companies and owners must restore disturbed land to a condition as close as possible, to the natural condition of the land before work commenced.

USES

No horses or motorized vehicles of any kind shall be permitted in common areas or easements. No discharging of fire arms, shall be allowed at any time.

NON-DEDICATION TO PUBLIC USE

Nothing contained in these covenants and restrictions shall be construed or be deemed to constitute a dedication, express or implied, of any part of the property or the common areas to or for any public use or purpose whatsoever. The use of the Tennis Court Site and Pond Sites are specifically reserved for owners and their guests and invitees.

MINERAL AND WATER RIGHTS

In order to protect the scenic, recreational and wildlife values of the area, no mineral or water rights owned by Richard E. Thomson will be assigned or conveyed to individual lot owners. Richard E. Thomson reserves the right to convey the water rights and any mineral rights to the Homeowner's Association.

PRESERVATION OF WATER RESOURCES

The owners of all lots, their guests or employees shall at all times conduct their use and activities in a manner that will preserve the integrity of the springs, ponds, streams, irrigation, water and creeks within the premises. The degradation or pollution of water quality will not be permitted. All applicable state and local guidelines and standards must be followed.

UTILITIES

INSTALLATION AND MAINTENANCE

Richard E. Thomson or his designated representative shall cause the installation and maintenance of electric power, gas, cable, and telephone utility service to the junction of the main access road and home lot driveways. Owners shall bear all responsibility and costs from such junction to home lots.

All utilities of every nature shall be installed and maintained underground. Piping and wiring shall be concealed.

Each owner shall be responsible for utility installation and maintenance in accord with state and local regulations.

WATER AND SEWAGE

All improvements or structures designed for occupancy or use by humans shall be connected with domestic water facilities constructed or installed by the developer. Separate septic tanks and drain fields shall be installed by the lot owners for each residence as located on the plat. All septic tanks shall be pumped at least every four (4) years. In the event a central domestic sewer system becomes available, lot owners may elect to hook onto

that system.

The Homeowners' Association shall manage, operate, and maintain the domestic water system to be installed by the developer. All lot owners shall hook up to the domestic water system when a residence is constructed on a lot. Each home will purchase a water meter from the Homeowners' Association. The meter will include a remote readout.

Monthly water rates shall be set by the Board of Directors of the Homeowners' Association. Such fee shall include a provision for establishment of a reserve fund for replacement, maintenance, and emergencies. The rates may be increased or decreased by the Board to regulate water use. A reserve fund of at least FIFTEEN THOUSAND DOLLARS (\$15,000.00) shall be established and maintained.

The Board may direct the operator to shut off water service to a home when a bill is 2 months past due, or for non-compliance with irrigation restrictions.

The Association, through its Board of Directors, shall administer the water rights for the subdivision, including both domestic water and irrigation water for all lots and the parks. The Association shall have the authority to charge a fee for the hook up and usage of the water and to make assessments for the costs and expenses of installing and maintaining the water system including pumps, lines, pipes, electricity, wiring, sprinklers, and any and all other parts, equipment or material used in the subdivision water system, both for domestic water use and for irrigation.

ANIMALS

No livestock, poultry, or other animals, except dogs, cats, birds or other small in-house pets are allowed, in the subdivision. Only two (2) dogs and two (2) cats, may be kept for any lot. Kennels, or other facilities for the keeping or retention of animals, shall be restricted to areas so designated by the Committee.

All dogs, cats, and other pets shall be strictly controlled by their owners so as not to annoy or interfere with the use of the subdivision by other owners and to prevent the interference or harassment of wild birds or animals in the subdivision or on surrounding or adjacent properties. Dogs, cats and other pets shall be kept tethered or confined on the owner's property and shall not be permitted to roam free at any time. If an animal becomes a nuisance, hazard, or threat to other persons or animals in the subdivision or to wild animals, the Committee may order the owner of such animals to remove the animal from the subdivision.

The commercial breeding, care, raising, or keeping of any animal is forbidden.

MAINTENANCE

Owners shall maintain home lots and improvements in good repair and appearance at all times. All landscaping improvements and property shall be kept and maintained in good, clean, safe, sound, attractive, thriving and sightly condition and in good repair at all times.

NOXIOUS OFFENSIVE OR HAZARDOUS ACTIVITIES

No noxious, offensive or hazardous activities shall be permitted upon any portion of the property nor shall anything be done on or placed upon any portion of the property which is or may become a nuisance to others. No light shall be produced upon any home lot or other portion of the property which shall be unreasonably bright or cause unreasonable glare. Exterior loud speakers shall be prohibited. No sound shall be produced on any home or other portion of a property which is unreasonably loud or annoying, including but not limited to speakers, horns, whistles or bells.

SIGNS

No permanent signs of any type shall be permitted on any lot other than those required by governmental authorities. Real estate signs shall be allowed only on the property for sale.

NUISANCE PROHIBITED

No noxious or offensive activity shall be permitted upon any of the real property covered by these protective covenants, nor shall any use of activity be permitted which may be or may become an annoyance or nuisance to adjacent landowners or which may depreciate the natural environmental amenities of said property.

ENFORCEMENT

WYLIE CREEK HOMEOWNERS' ASSOCIATION AND DESIGN REVIEW BOARD

The provisions of these protective covenants may be enforced by individual owners, Wylie Creek Estates Homeowners' Association or Richard E. Thomson.

RIGHT OF ACCESS

A right of access shall be reserved and be immediate for making of emergency repairs in improvements or lots on the property. These repairs may be needed to prevent property damage, personal injury, or continued property damage.

ACTION

In the event of violation of any of these covenants, or the design regulations or additional covenants and regulations adopted pursuant to the terms of these covenants, legal proceedings may be brought in a Court of Law or equity for injunctive relief and damages. In addition, an owner, the D.R.B. or Richard E. Thomson may enforce these covenants by serving notice in writing on the person or entity violating these covenants which notice shall specify the offense, identify the location and demand compliance with the terms and conditions of these covenants. Such notice shall be personally served. In the event personal service can not be obtained after reasonable efforts, notice shall be posted at a conspicuous place on the property in question and a copy of the notice shall be mailed by certified mail, return receipt requested, to the last known address of the party or entity.

No owner, nor the D.R.B., nor Richard E. Thomson shall be liable to any person or entity for any entry, self help or abatement of a violation or threatened violation of these covenants. All owners, invitees and guests shall be deemed to have waived any and all rights or claims for damages for any loss of injury resulting from such action except for intentionally wrongful acts.

Enforcement of these covenants shall be by proceedings either at law or in equity against any person or persons violating or attempting to violate these covenants; and the legal proceedings may be either to enjoin or restrain violation of the covenants or to recover damages or both. In the event of action to enforce these covenants, the prevailing party shall be entitled to costs and a reasonable attorney's fee to be set by the Court.

The failure by the Grantor or its assigns or the association of any subsequent lot owner to enforce any covenants or restrictions contained herein shall in no event be deemed a waiver or in any way prejudice the right to enforce that covenant at any time against any person breaking the covenant or any other covenant breached thereafter or to collect damages for any subsequent breach of covenants.

Invalidation of any one of these covenants by judgment or Court order shall in no way affect any of the other covenants or provisions, all of which shall remain in full force and effect.

All of the above described real property and lots shall be subject to the restrictions and covenants set forth herein whether or not there is a reference to the same in a deed or conveyance.

A breach of any of the foregoing 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 upon any lot or portion of the real property or any improvements thereon. However, these restrictions and covenants shall be binding upon and inure to the benefit of any subsequent owner who acquired by foreclosure,

trustee sale or otherwise, title to Wylie Creek Estates property.

PERPETUITY

These covenants shall continue in full force and effect and shall run with the land as legal and equitable servitude in perpetuity unless amended as set forth herein.

AMENDMENT

These covenants shall remain in effect until amended or terminated. The covenants, or any portion thereof, may be amended, terminated, or supplemented at any time by the execution of a written document containing the terms of the amendment, supplement or termination of any of the covenants, duly acknowledged by a Notary Public, and recorded with the office of the Gallatin County Clerk and Recorder, executed by at least seventy-five (75%) of the owners of the property based on one vote per lot. If there is more than one owner for a lot, each owner must execute the amendment, supplement or termination document to count for one vote towards the seventy-five percent (75%) total.

Amendment or modification of provisions of these covenants pertaining to control of noxious weeds, adjacent agricultural uses, maintenance of bordering agricultural fences, park and road maintenance, and cleaning of septic tanks every four (4) years, must also have the consent of Gallatin County.

SEVERABILITY

Captions and paragraph headings are designated herein as a matter of convenience. A determination of invalidity of any portion of these covenants shall not in any manner affect the other portions or provisions.

ADMINISTRATION, MANAGEMENT AND REGULATION

DESIGN REVIEW BOARD

The D.R.B. shall be constituted, shall conduct its business and shall have the authority and responsibility as provided herein above and in the attached document, titled DESIGN REVIEW BOARD DECLARATION FOR WYLIE CREEK ESTATES.

WYLIE CREEK ESTATES HOMEOWNERS' ASSOCIATION

The Wylie Creek Estate Homeowners' Association shall be constituted, shall conduct its business and shall have the authority and responsibility as provided herein and in the attached document titled Declaration of Homeowners' Association for Wylie Creek Estates.

IN WITNESS WHEREOF, this instrument has been executed this 26th 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 26th 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

335446

State of Mont., County of Gallatin. ss Filed for record _____
November 26, 19 96 at 2:53PM., and recorded in Book 168 of
Miscellaneous Page 3608 Shelley M. Choney Recorder
Fee: \$120.00 By Barbara C. Clawson Deputy
Security Title Co.