



COMMUNITY **COVENANTS**



Including 1st, 2nd, and 3rd Amendments, 03/09/2023.

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AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HERON CREEK MAJOR SUBDIVISION

This Amended Declaration of Covenants, Conditions, and Restrictions ("Declaration") is made this 09th day of March 2023, by Sussex Development, Inc., of Helena, Montana, hereinafter referred to as "Declarant."

RECITALS:

WHEREAS Declarant is the owner of certain parcels of real property situated in Lewis & Clark County, Montana, more particularly described as set forth in **EXHIBIT A**, attached hereto and by this reference made a part of this Declaration ("the Property"); and

WHEREAS Declarant desires to place restrictions, covenants, and conditions upon the Property in order to ensure orderly development and continued stewardship and maintenance, in accordance with the terms of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following restrictions, covenants, and conditions, all of which are for the purpose of maintaining uniform and stable character, quality, architectural design, use, and development of the Property for its residents, and enhancing the value, desirability, and attractiveness of the homes located within the boundaries of the Heron Creek Major Subdivision. These restrictions, covenants, conditions, and easements shall run with the land and be binding upon all parties having or acquiring any right, title, or interest in the described real property or any part thereof, as well as their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I -- DEFINITIONS

Whenever used in this Declaration, the following terms have the following meanings:

- 1.01 **Architectural Review Committee (ARC)** – The term “Architectural Review Committee” or “ARC” shall mean the committee appointed by the Declarant and/or Board of Directors to ensure that all improvements on the Property are designed, located, and constructed in accordance with the Design Standards.
- 1.02 **Association** -- The term "Association" shall mean the Heron Creek Owners Association, Inc., a non-profit corporation made up of the owners of the lots encompassed in the Heron Creek Major Subdivision.
- 1.03 **Bylaws** -- The term "Bylaws" shall refer to the Bylaws of the Heron Creek Owners Association, Inc.
- 1.04 **Board** -- The term "Board" shall mean the Board of Directors of the Heron Creek Owners Association or elected officials of the Association.
- 1.05 **Common Area** -- The term "Common Area" shall mean and refer to all real property and improvements owned by the Association for the common use, convenience, and enjoyment of the Owners, including designated parkland, bicycle and pedestrian paths, the wastewater treatment system located on Lot 24T, and the drain field, trails, and ponds located on Lot 23T. The Common Areas shall become the property of the Association upon recording of this Declaration without further deed or conveyance by Declarant to Association. The Declarant may use, alter, construct upon, or utilize the Common Area for any use that may be reasonably related to the construction, sale, or rental of any Structure or the development or maintenance of the Property; provided that such use does not unreasonably interfere with the Owners’ use or maintenance of such Common Areas.
- 1.06 **Declarant** – The term "Declarant" shall mean Sussex Development, Inc., its directors, officers, heirs and successors, and any individual or legal entity to whom Declarant may specifically assign all of its rights and interests pursuant to the terms of this Declaration.
- 1.07 **Declaration** -- The term "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions, including lawful amendments.
- 1.08 **Design Standards** – The term “Design Standards” shall mean the Design Standards and Procedures adopted and published by the Architectural Review Committee (ARC), which shall set forth procedures for review of plans and elevations for buildings, structures, and other development on the Lots and establish standards and criteria that the ARC will follow in reviewing proposed developments.
- 1.09 **Heron Creek** -- The term "Heron Creek" shall mean the Heron Creek Major Subdivision, as set forth in Exhibit A.
- 1.10 **Improvements** -- The term "Improvements" shall include, but not be limited to, the construction, installation, demolition, alteration, or remodeling of buildings, walls, fences or other enclosures, landscaping, swimming pools, or any other structure of any kind.

- 1.11 **Lot** -- The term "Lot" shall mean each separate parcel of land that is privately owned and shown upon any recorded subdivision plat of the Heron Creek Major Subdivision.
- 1.12 **Lot Sale** -- The term "Lot Sale" shall be interpreted to mean the time of closing, when the property deed is conveyed to the buyer or when a contract for deed is signed between the parties, rather than the time when the parties enter into a buy/sell agreement.
- 1.13 **Member** -- The term "Member" shall mean each person or entity holding a record ownership in a Lot, including Declarant. The term "Owner" and "Member" shall be used interchangeably in this document.
- 1.14 **Owner** -- The term "Owner" shall mean each person or entity holding a record ownership in a Lot, including Declarant. The term "Owner" shall not mean a person or entity who holds an interest in a Lot merely as security for the performance of an obligation.
- 1.15 **Property** -- The term "Property" shall mean the real property described in Exhibit A hereto.
- 1.16 **Rules and Regulations** -- The term "Rules and Regulations" shall mean those rules and regulations as may be adopted from time to time by the Association to govern the use of the Lots and the Property. No Rules or Regulations may be adopted that violate or conflict with the intention or provisions of this Declaration.
- 1.17 **Structure** -- The term "Structure" shall mean any construction erected or placed upon any Lot, including, but not limited to, buildings, parts of and additions to buildings, walls, fences and other enclosures, television and other antennae, walks, and driveways.
- 1.18 **Turnover Date** -- The term "Turnover Date" shall mean the date on which the Declarant elects, at its discretion, to turn over certain responsibilities to the Owners Association. This date shall be no earlier than the date on which eighty percent (80%) of the Lots in Heron Creek, including Lots added to Heron Creek pursuant to Article VIII, have been sold, unless Declarant elects in writing to turn over some or all duties and responsibilities to the Association prior to this time. The Turnover Date shall be effective when Declarant records a written notice in the Office of the Clerk and Recorder of Lewis and Clark County, Montana, evidencing its intent to effect the turnover.

ARTICLE II -- OWNERS ASSOCIATION

2.1 **Purpose** -- The Heron Creek Owners Association shall be dedicated to implementing, protecting, and furthering the common plan and scheme of development as contemplated by this Declaration. The Association shall represent and serve Owners in

accordance with the provisions set forth herein, the Association Bylaws, and the Design Standards, as may be adopted and amended from time to time.

2.2 Association Documents – Each Owner shall abide by the terms, conditions, and obligations of the “Association Documents,” which shall include this Declaration, the Articles of Incorporation, Bylaws, Design Standards, and the Rules and Regulations, as may be adopted and amended from time to time. If there is any conflict or inconsistency between the terms and conditions of the Association Documents, the Documents shall control in the following order of priority:

1. This Declaration;
2. The Articles of Incorporation;
3. The Bylaws;
4. The Design Standards;
5. Rules and Regulations.

2.3 Membership -- Every Owner of a Lot in Heron Creek shall be a Member of the Association. Membership shall be appurtenant to and inseparable from ownership of any Lot in Heron Creek, and Lot ownership shall be the sole qualification for membership in the Association. Any person or entity who holds an interest in any Heron Creek Lot merely as security for the performance of an obligation is specifically excluded from membership in the Association.

2.4 Voting Structure -- Except for Lots owned by Declarant, each Lot within Heron Creek shall be entitled to only one vote. When more than one person or entity has an ownership interest in a single Lot, the vote for such Lot shall be exercised in such a way as the Owners of that lot determine amongst themselves. Declarant shall be entitled to seven votes for each Lot it owns, until such time as each such Lot is sold, at which time the new Owner shall be entitled to one vote. Any Lot that is delinquent in the payment of its initial or annual assessment, as provided by Section 5.6, shall not be entitled to vote on Association matters until such time as the outstanding assessment(s) has been paid in full.

2.5 Board of Directors – Until the Turnover Date, the Board of Directors of the Association shall be comprised solely of such persons as may be appointed in writing by Declarant. Declarant may revoke and reconstitute the Board at any time, at its sole discretion. After the Turnover Date, the Members shall elect a Board of Directors consisting of no fewer than three and no more than five directors. The specific offices, terms, duties, and mechanism for selection of Board of Directors shall be set forth in the Association Bylaws.

2.6 Annual Meeting -- The annual meeting of the Association shall be held at such time and place as the Board of Directors may select, in accordance with the Association Bylaws.

2.7 **Special Meetings** -- Special meetings of the Association may be called at any time by the President of the Association, by the Board of Directors, or upon written request of the Members representing twenty-five percent (25%) of the Members of the Association. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof.

2.8 **Meeting, Notice, and Quorum** -- Each Member shall be provided written notice of any meeting called for the purpose of taking any action authorized under this Declaration or the Association Bylaws. Written notice shall be provided not less than ten (10) or more than thirty (30) days prior to such meeting and shall specify the time, date, place, and purpose of the meeting. Any action undertaken by the Association shall require the assent of a majority of Members present, or represented by proxy, at a meeting whether a quorum is present. The number of votes present, in person or by proxy, necessary to constitute a quorum is fifty percent (50%) of all Voting Members.

2.9 **Proxies** -- Every Member entitled to vote at a meeting of the Association, or to express consent or dissent without a meeting, may authorize another person or persons to act for him by proxy. Every proxy must be in writing signed by the Member. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it, except as otherwise provided by law.

ARTICLE III -- DUTIES AND POWERS OF THE ASSOCIATION

3.1 **Powers and Duties** -- Unless expressly prohibited by law or any of the Association Documents, the Association may take any and all actions that it deems necessary or advisable to fulfill its purposes. Such actions may include, but are not limited to: (1) administering and enforcing the covenants, conditions, restrictions, reservations, and easements created herein; (2) levying, collecting, and enforcing assessments, liens, charges, and penalties imposed by the Association Documents; (3) appointing members of the Architectural Review Committee with the goal of ensuring that all improvements on the Property are designed, located, and constructed in accordance with the Design Standards; (3) taking any action necessary or appropriate to protect the general safety and welfare of Owners and residents and their guests; (4) regulating and managing the Property with the goal of enhancing and protecting its value; (5) managing and maintaining all Common Areas; (6) coordinating with governmental agencies when appropriate; and (7) providing other such services as necessary to fulfill the purposes and objectives of the Association Documents.

3.2 **Assessments and Inspection of Records** -- The Association shall assess and collect fees and disburse funds in accordance with Article V. The Association shall also fix the amount of the assessment related to each Lot for each assessment period, at least sixty (60)

days prior to the date on which the assessment is to be collected. Written notice of the assessment shall be delivered to every Owner, and every Owner shall have the right to inspect all records related to the assessments of Heron Creek. The Association shall, upon request from any Owner and for a reasonable charge, furnish a written statement setting forth any outstanding assessments to a specific Lot, if applicable.

3.3 Enforcement of Assessment Payments -- The Association shall enforce the payment of assessments owed by its Members according to the terms of Article V below.

3.4 Maintenance of Open Space -- The Association shall take all actions necessary for the ownership, preservation, and protection of all Common Areas within Heron Creek, in accordance with this Declaration and the Association Documents.

3.5 Maintenance of Fire Protection System -- The Association shall provide all funding and shall take all actions necessary for the maintenance and repair of the Heron Creek Fire Protection System, including regular cleaning of the fire pond, system testing, and all necessary maintenance necessary to ensure a fully operational system at all times of the year. In accordance with this Declaration and the Association Bylaws, the Association shall contribute five percent (5%) of the HOA initial and annual assessments into an account specifically set aside for maintenance of the Heron Creek Fire Protection System. Funding of this account shall occur annually until the balance reaches \$20,000.00. The fund will then be maintained at this amount until maintenance is needed. The five percent (5%) contribution shall resume each time the account balance falls below \$20,000.00.

3.6 Reporting Requirements -- The Association shall create an annual report to MDEQ on Lots sold and any new construction completed so as to maintain compliance with MDEQ wastewater treatment requirements. The Association shall also keep and maintain a schedule of maintenance on each septic tank within the system.

ARTICLE IV -- PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT

The ownership of each Lot in Heron Creek shall include the deeded Lot and all rights incidental thereto, as described in the deed to such Lot and/or in this Declaration, and such rights shall pass with title to every Lot. Every Owner shall have a non-exclusive right of use and enjoyment of the Heron Creek bicycle and pedestrian paths and any other Common Areas that are not restricted, provided that such right shall be subject to the restrictions and obligations set forth in this Declaration and/or in the property deeds.

Declarant shall be entitled to use, alter, construct upon, or utilize the Common Area for any use that may be reasonably related to the construction, sale, or rental of any Structure or

the development or maintenance of the Property; provided that such use does not unreasonably interfere with the Owners' use or maintenance of such Common Areas.

ARTICLE V – ASSESSMENTS AND FEES

5.1 **Purpose of Assessments** – Assessments shall be levied for any legitimate purposes, including but not limited to: the maintenance, repair, and improvement of the Fire Protection System, bicycle and pedestrian paths, septic tanks, waste water treatment facility, and other Common Areas; for landscaping and weed management; and for any other purposes provided by this Declaration or the Association Documents. The Owner of each Lot shall be subject to the fees and assessments as set forth herein.

5.2 **Initial Assessment** – Each Owner shall be assessed a one-time initial assessment, due and payable at the time of the Lot Sale, which shall be deposited in the Association account(s) for uses consistent with those described in this Declaration and the Association Documents. The Initial Assessment amount shall be \$400.00 per Lot and may be amended from time to time by the Association. This initial assessment amount may be changed by resolution of the Board of Directors of the Association at one of its regular or special meetings. It shall not be necessary for the Board to amend this Declaration in order to change the amount or payment frequency of any assessment.

5.3 **Annual Assessment** – Each Owner shall be assessed an annual fee, which shall be deposited in the Association account(s) to be used for administrative and operating costs of the Association; for maintenance and minor improvements of the Fire Protection System, bicycle and pedestrian paths, landscaping, septic tank maintenance, and for other purposes approved by the Association or provided by this Declaration or the Association Documents.

5.4 **Payment of Annual Assessments** -- The Board shall establish and approve the amount and due date of the Annual Assessment, and shall furnish written notice of such assessment to every Owner at least sixty (60) days in advance of the payment due date. The Annual Assessment shall be fixed at a uniform rate for all Lots to which such fees or assessments apply, except that Lots owned by Declarant shall be excluded from any and all Assessments.

5.5 **Special Assessments** – In addition to the Initial Assessment and Annual Assessment, the Association may institute and levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, improvement, or replacement of any capital improvement on the Property owned or maintained by the Association, provided that such Special Assessment shall have the approval of a majority of the Members of the Association.

5.6 **Effect of Non-Payment of Assessments** -- Any Assessment not paid within thirty days after the established due date shall become delinquent and shall bear interest from the due date at the rate of ten percent (10%) per annum plus reasonable collection fees and/or attorney's fees associated with the collection of such assessment. The Association may bring an action in law against the Owner personally obligated to pay the same or may place and foreclose a lien against such Owner's Lot. The Association shall be entitled in any foreclosure proceeding to recover its costs, expenses, and reasonable attorney's fees. No Owner may waive or otherwise escape liability for any overdue assessments provided herein by non-use of the Common Areas or abandonment of their Lot. Any Owner who is not current on assessments shall lose their voting privileges until such assessments are brought current.

5.7 **Subordination of Assessment Lien** -- Any lien for assessments, as provided herein, shall be subordinate to the first mortgage lien for the Property. Sale or transfer of any Lot shall not affect the validity of the assessment lien. Any person purchasing any of the Heron Creek Lots hereby waives any right to contest the validity of the liens created herein if such lien is enforced in accordance with the provisions of this Declaration.

5.8 **Wastewater Treatment System Connection Fee** -- Each Owner shall be required to pay a one-time fee of \$5,000.00 to Declarant to connect to Heron Creek's wastewater treatment system. Such fee shall be paid after ARC approval and prior to final occupancy of the residence or at closing, whichever comes first. In the event an Owner fails to pay this connection fee as set forth herein, Declarant shall be entitled to enjoin or disconnect wastewater treatment service, bring a legal action against the Owner for nonpayment, place and foreclose a lien against Owner's Lot, or take any other action necessary to recover this delinquent fee. In addition to the unpaid fee, Declarant shall be entitled to recover interest from the ARC approval date at a rate of ten percent (10%) per annum plus costs associated with the nonpayment and collection, including reasonable attorney's fees.

5.9 **Water Wells** -- Each Owner shall be required to pay a one-time fee of \$5,000.00 to Declarant to connect to the water well that is provided by the Declarant. Such fee shall be paid after ARC approval and prior to the Owner's commencement of construction. In the event an Owner fails to pay this fee prior to the commencement of construction, Declarant shall be entitled to enjoin or disconnect water service, bring a legal action against the Owner for nonpayment, place and foreclose a lien against Owner's Lot, or take any other action necessary to recover this delinquent fee. In addition to the unpaid fee, Declarant shall be entitled to recover interest from the ARC approval date at a rate of ten percent (10%) per annum plus costs associated with the nonpayment and collection, including reasonable attorney's fees.

ARTICLE VI -- PROTECTIVE COVENANTS

The following protective covenants shall run with the land and be binding upon all parties having or acquiring any right, title, or interest in the described real property or any part

thereof, as well as their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof. Additional covenants related to the design, location, and construction of Improvements are contained in Article VII (Architectural Review).

6.1 Land Uses

- 6.1.1 **Residential Use** -- All Lots in Heron Creek platted through the subdivision process shall be used for single family residential purposes only. There shall be no more than one single family dwelling constructed or located on each such Lot. Providing childcare that requires state licensure does not qualify as a residential use for purposes of this provision and is prohibited.
- 6.1.2 **Residential Lease or Rent** -- Any Owner may lease or rent his or her Heron Creek residence, provided that any such lease or rental agreement is for a period of one year or greater and the lessee(s) or renter(s) thereof shall be made aware of, shall abide by, and shall be subject to all of the provisions of this Declaration.
- 6.1.3 **Commercial Use** -- No part of Heron Creek or any Lot contained therein shall be used, caused to be used, allowed, or authorized to be used for any business, commercial enterprise, manufacturing, mercantile, storage, vending, or other nonresidential purpose. The sale of any Lot by Declarant, or the lease or rental by any Owner of a lot and residence thereon shall not constitute a commercial use or enterprise for the purposes of this provision. The use of a home office to assist a professional business shall be allowed so long as there are not client meetings at that business.

6.2 Lot Sizes and Building Construction

- 6.2.1 **Changes in Lot Size** -- No Lot shall be subdivided into smaller parcels or joined with another Lot to create a modified Lot in shape or size. If the same individual or entity purchases two or more adjoining Lots, such Lots shall continue to be treated as individual Lots for voting, assessments, and any other issues related to the Association, but both lots become considered one lot and will be able to occupy one residence. Lots shall be subject to the building restrictions set forth herein.

This provision shall not apply to Declarant, who retains the right to further subdivide, join, or modify any Lot owned by Declarant as permitted by law. This provision shall also not apply to the additional neighboring parcels owned by Declarant, which may be further subdivided and added to Heron Creek in

accordance with the County's subdivision review procedure and Article VIII herein.

6.2.2 **Set Backs** -- All Structures shall maintain the following minimum set back distances unless there are specific lot conditions in which a variance must be granted by the ARC:

Village Lots	Front center line of road – 40', Sides – 10', Rear – 20'
Loop Lots	Front center line of road – 50', Sides – 20', Rear – 40'
Estate Lots	Front center line of road – 60', Sides – 30', Rear – 40'

Additional structures must be at least 15' and not more than 50' away from the primary house and must follow all setback requirements.

6.2.3 **Building Types & Sizes** -- All Structures shall be constructed on-site and shall constitute new construction. There shall be no off-site Structures moved onto any Lot, no single-wide or double-wide trailers, no manufactured homes, and no modular buildings of any type. Each residential dwelling unit shall have a minimum two car garage and the following minimum square footage requirements:

Village Lots	Total footprint of finished area (1200 SF) or total finished house (1800 SF)
Loop Lots	Total footprint of finished area (1500 SF) or total finished house (2400 SF)
Estate Lots	Total footprint of finished area (1800 SF) or total finished house (3000 SF)

6.2.4 **Remodeling and Repair Projects** -- Any remodeling or exterior repair projects shall be undertaken only in accordance with the covenants and restrictions set forth herein, and shall match the character, quality, and architectural design of the underlying Structure.

6.2.5 **Building and Fire Codes** -- All construction shall meet or exceed provisions of the International Residential Building Code, the Uniform Fire Code, state and county fire regulations, and seismic zone 3 standards. In addition, roofing materials shall be of Class A or B fire rating.

6.2.6 **Construction Quality** -- All Structures shall be of high quality, permanent construction, and shall be constructed with complementary character and

architectural design, in accordance with the Design Standards adopted by the Architectural Review Committee.

- 6.2.7 **Visual Harmony** -- Visual harmony is a key element in the development of Heron Creek. Buildings shall be aesthetically compatible with one another and shall harmonize visibly with the community environment.
- 6.2.8 **Colors** – Neutral, non-stark colors and earth tones shall be allowed on the exterior of any Structure, or on any interior portion of the Structure that has high visibility from the Common Areas or the surrounding lots. For purposes of this provision, non-stark colors shall specifically exclude any color that provides a glare or high contrast against the contrast of the community environment. All colors on the exterior of any Structure, or on any interior portion of the Structure that has high visibility from the Common Areas or the surrounding lots, must be approved by the ARC.
- 6.2.9 **Garages and Ancillary Structures** -- Each residence shall have two car or more garage, attached or detached, and located not less than 15' or greater than 50' of the main house. All outbuildings and garages must be constructed of quality, materials, design, and color similar to and coordinating with the main residence, in accordance with the Design Standards.
- 6.2.10 **Driveways** -- Driveways shall be paved from the street to the garage and or separate garage at the time of construction. Due to weather conditions, additional time for construction may be granted by the Board.
- 6.2.11 **Fencing and Privacy Screens** -- To the extent possible, landscaping and vegetation shall be used in place of fencing to enhance Lot privacy. No fencing shall extend past the front of the house or interfere with access to the Common Areas. All fencing shall be uncolored wooden three-rail fencing, with or without wire paneling. Other fencing shall not be allowed on any Lot, except with the advance written approval of the ARC.
- 6.1.12 **Retaining Walls and Rock Walls** – Retaining walls and any walls used for landscaping or aesthetic purposes should be constructed of natural stone and rock. Use of Keystone, concrete, or other artificial rock must have prior written ARC approval.
- 6.2.13 **Decks and Porches** -- Owners are encouraged to build all decks and porches out of low maintenance materials.

6.2.14 **Exterior Lighting** -- Each residence must have subtle, non-glare exterior lighting that highlights natural features and guides people through walkways. Automatic dusk-to-dawn pathway lighting is encouraged. The use of motion detection lighting is allowed, but the direction of the beam and timing mechanism must be controlled in such a way that the lighting serves its safety and security purpose without casting a direct beam upon neighboring properties or upon Common Areas.

6.2.15 **Temporary Structures/Vehicles**-- No mobile homes, manufactured homes, or shipping containers shall be located on any Lot for any period of time or for any purpose, including storage, guest quarters, or temporary living. Temporary construction trailers or shelters used exclusively in connection with the construction of any work or Improvement shall be permitted on a Lot during the period of construction.

Small flatbed trailers up to 20' in length, travel trailers/campers less 26' in length, and boats less than 20' in length may be stored on the Owner's Lot, but only if the Owner is able to minimize their visibility through means such as privacy fencing, vegetation, building structure, or by parking the vehicle/trailer so that it does not affect the view of any neighboring landowner and is not highly visible from the street.

No motor homes, recreational vehicles, toy haulers, 5th wheels, or travel trailers/campers over 26' in length may be stored on the Owner's Lot. No parking of such vehicles will be allowed on the streets or in the driveways for more than 48 hours. Such parking is limited to loading and unloading such vehicles for personal use and may not occur more than twice every 7 days. Visitors may park and temporarily reside in such vehicles while visiting Owner provided all such visitors park on the side or back of Owner's Lot. Such visitors are limited to parking on Owner's Lot for no more than 10 days per stay and no more than once every 30 days.

Violations of this provision are subject to an initial \$250.00 fine plus \$25.00 per day that the violation continues.

6.2.16 **Signs, Billboards, and Monuments** -- No signs, billboards, posters, or advertising displays or devices of any kind shall be erected, placed, or allowed on any Lot, except for reasonable-sized signs advertising sale of the residence. A "Heron Creek" sign may be erected by the Declarant at any time. Declarant reserves the right to erect signs related to the construction and marketing of Heron Creek or model home without any restrictions.

- 6.2.17 **Antennae and Other External Fixtures** -- No large satellite dishes, large television/radio antennae, permanent flagpoles, or other external fixtures shall be constructed or erected on any Lot, without advance written approval of the Architectural Review Committee.
- 6.2.18 **Clearance of Fire-Related Hazards** – Vegetation must be managed so as to reduce exposure of Structures to flames and radiant heat during a wildfire. As a minimum, Declarant and Owners must create a defensible space by reducing and removing vegetation around each building according to slope as shown in the attached Vegetation Reduction Guidelines (*Fire Protection Guidelines for Wildland Residential Interface Development, Montana Department of State Lands July 1993*).
- 6.2.19 **Time for Completion of Construction** -- Construction of any Structure within Heron Creek shall be completed within eighteen (18) months from the date of its commencement. No basement or partially completed Structure shall be occupied as a residence prior to substantial completion of the residence.
- 6.2.20 **Residential Construction** – Unless agreed in writing by Declarant, any residential building(s) constructed on any Lot within Heron Creek shall be constructed by Sussex Construction, Inc. Any transfer of title for any undeveloped portion of said Property shall require that the transferee must execute a Construction Agreement with Sussex Construction, Inc. for the construction of a residence on the Property. In the event that the transferee or Sussex Construction, Inc. terminate the Construction Agreement, Declarant or its designee shall have the exclusive and irrevocable option to purchase the Property and all improvements constructed thereon for the amount invoiced and paid by the transferee as of the date of termination.
- 6.3 **Vegetation and Landscaping**
- 6.3.1 **Landscaping Timeline** – The front of all Lots visible from the Common Areas in Heron Creek subdivision must be landscaped at the time of construction with installation of timed underground sprinklers and/or drip irrigation. A landscape plan must be part of the original ARC submittal. Remaining landscaping shall be undertaken immediately upon completion of construction of a home on each Lot. In any event, landscaping should begin no later than the beginning of the first growing season after completion of the home and must be substantially completed by the end of the second growing season. Landscaping shall include the replacement of topsoil and natural vegetation when appropriate.

- 6.3.2 **Vegetation and Landscaping** -- Lots and Common Areas shall be carefully landscaped and maintained as necessary to preserve and enhance the natural setting of Heron Creek, using vegetation to achieve privacy, visual appeal, and erosion control. To the extent possible, Lots and Common Areas shall be landscaped with water conservation in mind, using low-moisture grasses and installing timed underground sprinklers and/or drip irrigation. Healthy trees and shrubs shall not be removed, harmed, or destroyed, except when essential for construction or fire protection.
- 6.3.3 **Fertilizers and Weed and Pest Control** -- Each Owner is responsible for the control of noxious weeds on his or her Lot, in compliance with the Montana Noxious Weed Control Act (§§ 7-22-2101, MCA, *et seq.*) and the rules and regulations of the Lewis & Clark County Weed Control District.
- 6.3.4 **Drainage** -- Owners shall refrain from interference with the established drainage pattern on any Lot and shall make adequate provisions for proper drainage from any other Lot over his or her Lot. For purposes of this provision, "established drainage" is defined as the drainage pattern established at the time when overall grading of Heron Creek is complete and as is outlined in the Approved Storm Water design for the development.
- 6.4 **General Conduct, Activities and Maintenance**
- 6.4.1 **General Lot Maintenance** -- Each Owner shall be responsible for the maintenance, repair, and upkeep of all Structures or Improvements on his Lot, including but not limited to the following: painting, staining, and repairing Structures; maintaining lawn and grounds; and removing refuse and other unsightly objects from the Lot.
- 6.4.2 **Trash Disposal and Recycling** -- Trash, garbage, and other refuse shall be kept only in sealed, sanitary containers and shall be disposed of once per week. No Lot shall be used as a dumping ground for rubbish.
- 6.4.3 **Nuisances** -- No noxious or offensive activities shall be carried on or permitted on any Lot, nor shall any Property be used in any way that might endanger the health or safety of the residents or that interferes in any way with the residents' quiet use or enjoyment of the Property. Any excessive noise, excessive speed, loud or persistent dog barking, or loud and persistent vehicle noises shall constitute a violation of this covenant.
- 6.4.4 **Hunting and Shooting** -- Absolutely no hunting or shooting of any kind shall be allowed within the Heron Creek area.

- 6.4.5 **Outside Laundering or Drying** – Outside drying is allowed so long as it does not create a disturbance or visual impairment and is not visible from the front of the house.
- 6.4.6 **Repairs or Improvements in Common Areas** -- The repair, maintenance, and upkeep of the Common Areas shall be the responsibility of the Association through its Board of Directors.
- 6.4.7 **Maintaining and Pumping Septic Tanks** -- The Association shall be responsible for maintaining the septic tanks to the extent required by MDEQ. Association maintenance of the septic tanks will be limited to pumping no more than once every three years, twice annual inspections and filter cleanings, and replacement of the effluent filters on a periodic basis as recommended in the operations and maintenance manual for the septic tank installed on the Owner's Lot. The cost of any additional maintenance services will be billed by the Association to the Owner as a Special Assessment. The Owner shall be responsible for any replacement costs, including replacement of the effluent filter. The Owner is responsible for informing the Association when their septic tank needs maintenance. The Owner shall provide access to the Association representative for the purpose of maintaining the septic tank.

The septic tank and component parts on the Owner's Lot are the property of the Owner. The Owner shall be required to operate the septic system pursuant to the operations and maintenance manual for the septic system installed on the Owner's lot. Operation of a septic system that is inconsistent with the operations and maintenance manual will subject the Owner to a fine in an amount deemed reasonable by the Association. The Owner shall be solely responsible for any damage to any Structure, Lot, Common Area, or other Property within the Subdivision resulting from the improper operation of the Owner's septic system.

6.5 **Domestic Animals and Wildlife**

- 6.5.1 **Domestic Animals** -- Animals allowed within Heron Creek are limited to those commonly accepted as household pets, such as dogs, cats, gerbils, hamsters, indoor birds, fish, and indoor turtles and reptiles. Additionally, a combination of up to six female chickens, ducks, or turkeys may be kept for personal, non-commercial purposes for every .5 acres of the lot, rounded down to the nearest .5 acres. For example, a 1.75 acre lot could keep up to a combination of 18 fowl. Poultry and fowl must be kept within a coop or enclosure and may be released or allowed to roam outside of the Owner's back yard only when the Owner is

present and maintains control. Geese, male chickens/roosters, or any other poultry or fowl are not permitted. Wild animal breeds and crossbreeds are not permitted. Fowl must be or located at least twenty-five feet (25') away from the property boundary or dwelling of another Owner. Poultry and fowl may not be located in front of the Owner's house.

Owners shall ensure that their animals do not become a nuisance to others by taking whatever humane steps necessary to curb excessive noise and to properly restrain pets. If accompanying their Owner off the Lot, dogs must be kept under Owner's control at all times, and any animal waste shall be promptly removed from the Property by the animal's Owner. All animals must be treated humanely and be properly fed, watered, sheltered, and vaccinated. Moreover, each dog shall wear a tag identifying its Owner's name, address, and phone number, and shall be kept within the perimeter of its Owner's Lot while unattended. No commercial kennels, commercial breeding, raising, training, or boarding of cats, dogs, or any other animals shall be allowed. No feedlots of any type may be kept or maintained on any Lot.

- 6.5.2 **Wildlife** -- Owners shall recognize that many wildlife species live on or migrate through Heron Creek during various times of the year. Owners and guests may not feed, harass, or approach any wildlife.

6.6 **Vehicle Use, Parking and Storage**

- 6.6.1 **Motor Vehicles** -- All motor vehicles shall be equipped with a functional muffler and shall be operated in a safe manner and in compliance with all governing laws and regulations. Scrap or junk vehicles or vehicles without parts will not be permitted on any Lot.
 - 6.6.2 **Parking of Motor Vehicles** -- Each Lot shall provide for enclosed parking for a minimum of two (2) vehicles, and Owners shall attempt to provide off-street parking for a minimum of two (2) additional vehicles. There shall be no parking in any place that blocks roads, driveways, or mailboxes, or that causes damage to the grassed or landscaped areas.
 - 6.6.3 **Recreational Vehicles** -- No recreational motorcycles, snowmobiles, mopeds, or other vehicles that cause excessive noise shall be operated or used on the premises for anything other than; maintenance, or ingress/ egress.
 - 6.6.4 **Motorhomes, Trailers, and Motorized Boats** -- Please refer to Section 6.2.15.
- ## 6.7 **Infrastructure, Easements, Waivers, and Notification of Potential Hazards**

- 6.7.1 **Infrastructure and Right-of-Way Easements** -- There are hereby reserved, for the purposes of public utility easements for the benefit of Heron Creek Common Areas and private Lots, permanent easements as described in the final plat for Heron Creek. Utility easements for the benefit of individual Lots are also be described in the final plat.
- 6.7.2 **Sanitary Restrictions** – Only sanitary systems as approved for the Heron Creek Subdivision are permissible.
- 6.7.3 **Propane Tanks**—All propane tanks must be buried.
- 6.7.4 **Variances** – An Owner may submit a written request to the Board of Directors for a variance from any protective covenant specified in this Article VI. The Board shall consider the variance request and shall be entitled, at its sole discretion, to grant a reasonable variance if necessary, to overcome practical difficulties, avoid unnecessary expense, or prevent unnecessary hardships. The Board shall use reasonable efforts to issue a decision regarding a variance request within thirty (30) days of submission of such request. All decisions of the Board will be final. The action or inaction of the Board or its agents, when exercising their discretion in good faith, will not be the basis for any damages to Owner or any other person, nor will any such action or inaction give rise to an action for damages or equitable relief by any Owner or other person. A Board’s decision to allow a variance to one Owner does not create any precedent for future variances.

ARTICLE VII -- ARCHITECTURAL REVIEW

- 7.1 **Purpose of Architectural Review** -- The following protective covenants are designed to create and maintain a high-quality residential area compatible with the natural environment of the Property, and to provide every practical and legal means to safeguard and protect the interests of all Owners and the stability of this development. The Architectural Review Committee shall strive to encourage designs that preserve the natural terrain, drainage, vegetation, trees, and topsoil to the extent possible and that are aesthetically compatible with the surrounding Structures and harmonize visibly with the natural environment.
- 7.2 **Role of Architectural Review Committee** – The role of the ARC is to review and act upon any request for approval of Improvements submitted by an Owner in order to ensure compliance with the Declaration and Design Standards. The ARC also will be responsible for inspecting the progress of construction to ensure that all Improvements conform to the Owner’s plans, specifications, and elevations, as approved by the Committee. It is not the purpose of the Architectural Review Committee to prevent any individual Owner from

constructing a home of unique design quality, but rather to protect the community against nonconforming designs or from construction and materials that are substandard in quality or not compatible with the subdivision as a whole.

7.3 Requirement of Review by Committee -- No residence, garage, fence, wall, ancillary structure, landscaping, driveway, or walkway shall be made, erected, altered, placed or permitted to remain upon any Lot until the Owner has submitted plans, specifications, and elevations showing the design, location, material, color and exterior finish to the Architectural Review Committee and until the Committee has approved such plans, specifications, and elevations in writing, in accordance with the Design Standards. The Architectural Review Committee shall be entitled to charge a reasonable fee and compliance deposit, which fees shall be payable at the time the plans or elevations are submitted. For purposes of this Declaration, the initial design review fee, effective as of Jan 1, 2018, shall be \$750.00. This review fee and any compliance deposit may be amended by resolution of the Board of Directors of the Association at one of its regular or special meetings. It shall not be necessary for the Board of Directors to amend this Declaration in order to change the amount or payment frequency of the design fee or compliance deposit.

The design fee shall be used by the ARC to defray the costs of plan review and construction inspection. In the event a compliance deposit is required, it shall be used, if necessary, to defray the ARC's costs associated with removing or correcting any noncompliance with the approved plans, specifications, and elevations. If not used, the noncompliance deposit shall be returned to the Owner at the completion of construction.

7.4 Membership of Committee -- Except as provided herein, the Architectural Review Committee shall consist of one to three persons appointed by the Board of Directors of the Association. After the Turnover Date, at least one of the members of the Architectural Review Committee shall have professional qualifications in the area of architecture, design, or land planning. Notwithstanding the foregoing, prior to the Turnover Date, the Declarant shall have the sole authority to appoint all persons to the Architectural Review Committee and remove and replace such members from time to time, and such persons need not be members of the Association. The Declarant may relinquish or assign the right to appoint any or all members at any time.

7.5 Design Standards -- The Architectural Review Committee shall publish Design Standards and Procedures which will set forth the procedures and criteria for review of residences, Improvements, and/or other Structures to be constructed or installed on any Lot in the Property, and for review of landscaping plans. Failure to follow procedures or criteria set forth in the current published Design Standards shall form an adequate basis for rejection of the submitted site plan and elevations; provided, however, that this requirement shall not be construed as preventing Declarant or the Architectural Review Committee, at their sole discretion, from waiving or

amending the Design Standards at any time or with respect to any application, in accordance with Paragraph 7.11 herein. Failure to follow such procedures or criteria set forth in the Design Standards shall also be deemed a breach of this Declaration by such Owner and shall entitle the Association or the Architectural Review Committee to exercise and pursue the rights and remedies provided herein with respect to such breach.

7.6 Approval or Disapproval by Committee -- If the Architectural Review Committee fails to approve or disapprove the design, location, construction, materials, color and/or exterior finish within thirty (30) days after all of the requirements set forth in the Design Standards have been submitted to it, such submittal shall be deemed denied. Upon approval in writing by the ARC of the submitted plans, elevations, and proposals, the Owner shall be permitted to commence construction in accordance with said plans and elevations. Any deviation from the approved plans and elevations shall be corrected to conform to the plans and elevations as submitted. Any structure to be erected in accordance with approval so given must be commenced within (1) year of approval or new approval must be obtained. If the exterior of any structure is begun and is not completed within eighteen (18) months of the commencement of construction, and in the judgment of the Architectural Review Committee is of offensive or unsightly appearance, then the said Architectural Review Committee or the Directors of the Association, at the option of either, may take such action as may be necessary in its judgment to remove the structure or to improve the appearance so as to make the property harmonious with other properties, including completion of the exterior of the structure, installation of screening or covering of the structure or any combination thereof, or similar operations, and the amount of any expenditures made in so doing shall be a lien on the property and may be enforced by an action at law.

7.7 Authority of Committee -- The Architectural Review Committee may act by a majority of its members and any authorization or approval made by the Architectural Review Committee must be signed by a majority of the members thereof. A majority vote of the Committee may designate a representative(s) to act in the place of the Committee. The Architectural Review Committee shall have sole and exclusive power to enforce compliance with the Design Standards, and in that regard, shall have the authority to levy and collect fines (including incremental fines for repeat offenders) or sue for damages or injunctive relief. Notwithstanding anything to the contrary contained herein or in any other Association Document, no Owner shall have the right to enforce or seek enforcement of the conditions or restrictions contained in the Design Standards except by bringing such violation to the attention of the Architectural Review Committee.

7.8 Restoration of Lot -- Upon completion of the construction on any Lot, the Owner shall to the greatest extent possible and in compliance with the Design Standards

and approved landscape plan restore the Lot at least to the conditions which existed prior to such construction (taking into account such construction and any landscaping, planting or lawn installed). The Owner must complete said restoration within ninety (90) days following completion of construction on any Lot, or as soon thereafter as reasonably possible due to adverse weather conditions or inappropriate growing season. If the restoration is not completed within said time frame, then any expenditures made by the Architectural Review Committee or Association for such restoration shall be a lien on the property and may be enforced by an action at law.

7.9 Inspection of Projects -- The Architectural Review Committee or its designated representative(s) may inspect and monitor any approved project within the Property to ensure that the construction or work on such project complies with any and all approved plans, construction procedures, applicable Design Standards, Rules and Regulations, and applicable law. The Architectural Review Committee or its designated representatives may enter upon any Lot within the Property at any reasonable time or times to inspect the progress, work status, or completion of any project. The Architectural Review Committee may withdraw its approval of any project and require all activity at such project to be stopped if deviations from the approved plan, construction practices, applicable Design Standards, Rules and Regulations, or applicable law are not corrected or reconciled within ten (10) days after written notification to the Owner specifying such deviations, or within such lesser period of time as is specified by the Architectural Review Committee in such notice to the Owner. The Architectural Review Committee shall have the authority to levy and collect Compliance Deposits and/or Default Assessments for such deviations, including, without limitation, incremental monetary fines for the occurrence of repeated violations.

7.10 Review Board Not Liable -- The Declarant, the Association, the Board, the Architectural Review Committee and any of their respective officers, directors, employees, members, agents, successors or assigns (collectively, the "Released Parties") shall not be responsible or liable for any defects in any plans or specifications which are submitted, revised, or approved pursuant to this Article VII; nor for any defects in construction pursuant to such plans and specifications; nor for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Architectural Review Committee. The Released Parties shall not be liable for damages to anyone submitting plans to them for approval, or to any Owner by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and submittals. Every person who submits plans to the Architectural Review Committee for approval agrees, by submission of such plans, and every Owner by acquiring title to a Lot, that he will not bring any action or

suit against the Released Parties to recover any such damages. Approval of plans, specifications, or submittals by the Architectural Review Committee shall not constitute an approval, ratification, or endorsement of the quality of architectural or engineering soundness of the improvements reflected thereby, and the Released Parties shall not have any liability in connection with approval of plans, specifications or submittals. Approval of plans and specifications pursuant to this Article VII shall not relieve any Owner of said Owner's responsibility to comply with any and all applicable governmental laws or regulations.

7.11 Variances – The Architectural Review Committee shall be entitled, at its sole discretion, to allow reasonable variances from the procedures specified in this Article VII or the Design Standards in order to overcome practical difficulties, avoid unnecessary expense, or prevent unnecessary hardships. All decisions of the ARC will be final. The ARC's written approval or notice of rejection will be conclusive evidence of such approval or rejection. The action or inaction of the Committee or its agents, when exercising their discretion in good faith, will not be the basis for any damages to Owner or any other person, nor will any such action or inaction give rise to an action for damages or equitable relief by any Owner or other person.

ARTICLE VIII – RIGHT TO INCLUDE ADDITIONAL REAL PROPERTY

8.1 Real Property -- In addition to the Lots currently subject to this Declaration, Declarant also owns additional real property that it intends to develop and add to the Heron Creek Subdivision as Phase IV and Phase V of the development. Declarant hereby reserves the right to subject such property to this Declaration at any time. In order to subject the additional subdivided lots to this Declaration, Declarant shall file a written document in the Office of the Clerk and Recorder of Lewis and Clark County ("Notice") and shall provide notice to the Association containing a description of the real property to be added and a statement that either all terms and conditions of this Declaration shall govern the additional property or that there are modifications of the Declaration as it applies to the additional property. Upon recording of the Notice, (1) the real property described therein shall thereafter be part of the Property and shall be governed by all of the provisions herein, except as modified by the Notice, and (2) the Declaration shall be deemed amended to add such additional property to the definition and description of the Property herein. In the alternative, the Declarant may amend and restate this Declaration in its entirety to add the additional real property and may re-record the Amended Declaration in the Office of the Clerk and Recorder of Lewis and Clark County.

Whether or not Declarant exercises the additional property inclusion set forth above, Declarant further reserves for itself, its successors and assigns, the right to connect the additional adjoining parcels to the existing Heron Creek infrastructure, including the roads, electrical system, and telephone system and Declarant hereby grants and reserves the right to use the

existing platted easements for road and utilities. Any utility connections shall be made and maintained by the applicable public utility in a manner so as to not adversely affect the function or operation of the utilities in Phases I-III. Additional Lots in Phases IV and V shall be entitled to connect to the Heron Creek wastewater system.

ARTICLE IX -- GENERAL PROVISIONS

9.1 **Duration** -- The covenants, conditions, and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Owner of any Lot subject to this Declaration and/or his or her respective legal representatives, heirs, successors, or assigns for a term of thirty (30) years from the date on which this Declaration is recorded. After that time, said covenants, conditions, and restrictions shall automatically be renewed for successive ten (10) year terms thereafter unless an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots has been recorded agreeing to revoke or terminate this Declaration. Any restrictions or covenants reflected in the deed of any Heron Creek Lots shall endure and be binding beyond the life of this Declaration.

9.2 **Amendment and Changes to Declaration** – Prior to the Turnover Date, the Declarant may amend this Declaration at any time. After the Turnover Date, the Declaration may be modified, changed or eliminated by an affirmative vote of at least seventy five percent (75%) of the Members, by written instrument duly executed under notary by all parties and recorded in the office of the Lewis & Clark County Recorder.

9.3 **Enforcement** -- The Association, any Owner, and/or the Declarant shall have the option and right to enforce by proceeding or in equity all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration. The method of enforcement may include a legal action to enjoin the violation, recover damages, or both. Failure by the Association, an Owner, or Declarant to enforce any such provision shall in no way be deemed a waiver of the right to do so thereafter. The prevailing party in any legal proceeding initiated to enforce this Declaration shall be entitled to the payment of reasonable attorney's fees, costs, and expenses associated with the legal action.

9.4 **Notices** -- Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when delivered in person or sent via certified mail, postage prepaid, to the last known address of the person or entity appearing as Owner on the Association records at the time of such mailing.

9.5 **Severability** -- The provisions of this Declaration shall be liberally construed to effectuate its purposes. The provisions shall be deemed independent and severable, and the invalidity of any provision by judgment or court order shall in no way affect any other provision, which shall remain in force and effect.

IN WITNESS WHEREOF, this Declaration has been executed the day and year first written above.

Ronald S. Bartsch, Declarant
On behalf of Sussex Development, Inc.

STATE OF MONTANA)

County of Lewis & Clark) : ss.

On this 09th day of March, 2023, before me, a Notary Public for the State of Montana, personally appeared Ronald S. Bartsch, known to me to be the person whose name is subscribed to this instrument and acknowledged that he had executed the same on behalf of Sussex Development, Inc.

In witness whereof, I have set my hand and affixed my notarial seal the day and year first above written.

(SEAL)

Printed Name
Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires _____ .