

**After recording please return to:**

Big Sky Owners Association, Inc.  
P.O. Box 160057  
Big Sky, Montana 59716

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**AMENDED AND RESTATED  
PROTECTIVE COVENANTS  
OF  
SWEETGRASS HILLS SUBDIVISION  
BIG SKY, GALLATIN COUNTY, MONTANA**

WHEREAS, protective covenants for Sweetgrass Hills Subdivision dated July 12, 1972 were executed by Big Sky of Montana, Inc., a Delaware Corporation, duly qualified in the State of Montana, and recorded at the office of the Clerk and Recorder, Gallatin County, Montana on July 18, 1972 at Film 14, Page 1746 and subsequently amended on July 1, 1976 at Film 33, Page 1139; January 17, 1984 at Film 81, Page 1514; April 23, 1984 at Film 82, Page 3537; May 9, 1986 at Film 91, Page 5098; May 15, 1986 at Film 92, Page 190; and September 3, 1991 at Film 117, Page 4741 for the real property known and legally described as:

Sweetgrass Hills Subdivision, according to the official plat on file at the office of the County Clerk and Recorder in and for Gallatin County, Montana [Plat Reference H-36, recorded July 18, 1972, and as subsequently amended].

WHEREAS, paragraph 15, Amendment, of the protective covenants for Sweetgrass Hills Subdivision dated July 12, 1972, and recorded at the office of the Clerk and Recorder for Gallatin County, Montana on July 18, 1972 at Film 14, Page 1746 require that "These covenants, or any portion thereof, may be amended, abandoned, terminated, modified or supplemented at any time by the written consent, duly recorded with the officer of the

Clerk and Recorder, Gallatin County, Montana, of the owners of seventy-five percent (75%) of the privately owned land included within the boundaries of the subdivision.”

WHEREAS, the owners of seventy-five percent (75%) of the privately owned land included within the boundaries of Sweetgrass Hills Subdivision voted to amend and restate the protective covenants for Sweetgrass Hills Subdivision.

NOW, THEREFORE, the Owners do hereby establish, dedicate, declare, publish and impose upon the real property the following Protective Covenants which shall run with the land and shall be binding upon and be for the benefit and value of the real property and the Owners thereof and shall be binding upon and inure to the benefit of the Association and the heirs, successors and assigns of the Owners of said real property and shall be for the purpose of maintaining a uniform and stable value, character, architectural design, use and development of the real property.

These Amended and Restated Protective Covenants shall replace and supersede the original covenants and all amendments thereto for Sweetgrass Hills Subdivision. These Amended and Restated Protective Covenants shall apply to all the real property and improvements placed or constructed thereon and unless these Amended and Restated Protective Covenants are amended, shall be in existence in perpetuity unless terminated by operation of law. Existing improvements and uses, and improvements under construction as of the date these Amended and Restated Protective Covenants are recorded with the office of the Clerk and Recorder of Gallatin County, Montana, which do not comply with these Amended and Restated Protective Covenants, shall be grandfathered and shall not be required to change to comply. However, any new construction, reconstruction, restoration, or remodeling of a structure or improvement or use which changes the size, use or location shall be required to comply with these Amended and Restated Protective Covenants. In the event any of these Amended and Restated Protective Covenants are declared invalid or unenforceable, the remaining Amended and Restated Protective Covenants shall remain in full force and effect.

## 1. DEFINITIONS

**Accessory Apartment-** a dwelling unit that has been added on to, or created within, a single family dwelling where permitted.

**Articles of Incorporation or Articles-** shall refer to the Articles of Incorporation of the Big Sky Owners Association, Inc. as filed with the Montana Secretary of State on October 24, 1972 and any amendments and restatements thereto.

**Amended and Restated Protective Covenants for Sweetgrass Hills Subdivision,  
Big Sky, Gallatin County, Montana dated April 1, 2008- FOR VOTE**

**Association-** refers to the Big Sky Owners Association, Inc., a Montana non-profit corporation operating pursuant to §35-2-113, et. seq., MCA, its successors or assigns.

**Association's Jurisdiction-** shall refer to the jurisdiction of the Association as set forth in the Bylaws.

**Big Sky Architectural Committee or BSAC-** shall refer to the Big Sky Architectural Committee as established in the Bylaws and these Protective Covenants.

**The Big Sky Community Corporation-** is a 501c(3) Montana non-profit corporation incorporated with the Montana Secretary of State on June 4, 1998.

**Board of Directors or Board-** shall refer to the Board of Directors of the Big Sky Owners Association, Inc.

**Bylaws-** shall refer to the Amended and Restated Bylaws for the Big Sky Owners Association, Inc., recorded on January 25, 2008 with the office of the Clerk and Recorder of Gallatin County, Montana as Document #2290050, and any amendments or restatements thereto.

**Caretaker Residence-** a dwelling unit for the family of a person who takes care of the house or land of an Owner who may be absent.

**Design Regulations-** refers to those design regulations adopted by the BSAC on May 30, 2003, effective July 1, 2003 and as subsequently amended.

**Good Standing-** refers to a Member's standing with the Association. In order to be in Good Standing, the Member must be current on the payment of their assessments, not be deemed by the Board to be in violation of these Protective Covenants, Articles, Bylaws, Design Regulations, and/or resolutions or policies of the Board; and current on any other payments deemed due and owing to the Association (including but not limited to design review fees, performance deposits and fines).

**Guest House-** a second living unit which is not leased, subleased, rented or sub rented separately from the main dwelling unit.

**Lot-** a legally described division of real property created pursuant to a subdivision plat recorded in the public land records in the office of the Clerk and Recorder of Gallatin County, Montana.

**MCA-** refers to the Montana Codes Annotated 2005 and any subsequent amendments.

**Member-** a Person who is an Owner of a Unit, Lot or Tract. If a Unit, Lot, or Tract is held by more than one Person, all co-Owners shall share the rights and obligations of membership in the Association, provided that there shall be collectively only one membership for each Unit, Lot, or Tract.

**Membership Interest-** a Membership Interest is assigned to each Unit, Lot or Tract in the Bylaws for purposes of assigning voting rights and allocating assessment liability to Members.

**Mortgagee-** shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more, Units, Lots, or Tracts.

**Occupant-** means an Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession of a Unit, Lot or Tract.

**Owner-** one or more Persons who hold the record title to any Unit, Lot, or Tract of land within the boundaries of the Subdivision, excluding in all cases any Person holding an interest merely as security for the performance of an obligation.

**Person-** a natural person, a corporation, a partnership, a trustee, or any other legal entity.

**Plat-** refers to the Sweetgrass Hills Subdivision Plat H-36 recorded July 18, 1972, on record with the office of the Clerk and Recorder of Gallatin County, Montana. Any other references to Plat that include alphabetical notations refer to a particular amendment of Plat H-36, which are also on record with the office of the Clerk and Recorder of Gallatin County, Montana.

**Protective Covenants-** this document in its entirety and any subsequent amendments.

**Staff-** shall refer to the employees or agents of the Big Sky Owners Association, Inc.

**Subdivision-** refers to the Sweetgrass Hills Subdivision as described in the Plat and any amendments thereto on record with the office of the Clerk and Recorder of Gallatin County, Montana.

**Tract-** a legally described division of real property created pursuant to or described in a survey containing a surveyor's certificate which is recorded in the public land records in the office of the Clerk and Recorder of Gallatin County, Montana.

**Unit-** a condominium unit which is a legally described division of real property created pursuant to a Declaration of Condominium and recorded in the public land records in the office of the Clerk and Recorder of Gallatin County, Montana.

**Zoning Regulations-** shall refer to the zoning regulations adopted for the Gallatin Canyon/Big Sky Zoning District on July 30, 1996 (Gallatin County Commission Resolution 1996-38) and as subsequently amended.

## 2. USE

### A. **Residential Lots**

i. Lots 1 through 18 of Block 1, Lots 1 through 6 of Block 2, Lots 1 through 28 of Block 3, Lots 1 through 38 of Block 4 of the Plat and any amendments thereto shall be used for single family dwellings only.

ii. No building or improvement shall be placed, constructed, reconstructed, altered or remodeled on any Lot except to provide for a single family dwelling, with either an attached or detached garage. Likewise, the BSAC, as provided in Article 4, may, in its discretion, allow for the construction of an Accessory Apartment either above a detached garage or an attached garage; and/or a Caretaker Residence; and/or a Guest House where the location of and the size of the Lot are such that there is sufficient room for the same and it does not unreasonably interfere with the view, building sites, landscaping, elevations and general aesthetic considerations and factors of nearby Lots. Nothing herein requires the BSAC to approve any of the above uses (Accessory Apartment, Caretaker Residence, Guest House); it is solely based on the BSAC's discretion and the above criteria. In the event the BSAC does approve one or a combination of the above uses (Accessory Apartment, Caretaker Residence, Guest House), the Owner must also receive approval under the applicable Zoning Regulations.

iii. Any plans for a dwelling on any Lot shall provide for off-street parking for at least two vehicles, except that parking within the right-of-way and adjacent to the running surface of the road on Two Guns White Calf Road as shown on the Plat is expressly permitted for the Owners of Lots 8, 9, 10, and 11 of Block 1 of this Subdivision. Such parking for each separate Owner must be contiguous to his or her particular Lot and must not in any way obstruct, hinder, or interfere with the free flow of two-way traffic and the construction, maintenance, repair and snow removal from the road. If plans for a dwelling include an Accessory

Apartment, Caretaker Residence, Guest House or any combination thereof those plans shall also provide for off-street parking for those uses.

iv. Each dwelling unit shall be constructed so as to include not less than 1,500 square feet of living space, exclusive of open porches, patios, carports, garages or basements.

v. No building, structure, alteration or improvement shall exceed 25 feet in height measured from the average level of finished grade.

vi. All buildings or structures shall be erected, placed, constructed, reconstructed, altered or remodeled so as to be in compliance with the setbacks as determined and applied under the applicable Zoning Regulations.

vii. No Lot shall be subdivided in any manner. Two or more contiguous whole Lots, if owned by the same Owner, may be combined to constitute one Lot. Any combination of more than one contiguous Lot, if owned by the same Owner, may be combined as one Lot for the purpose of applying these covenants by the Owner making such election in writing with Gallatin County and duly recording the same with the office of the Clerk and Recorder, Gallatin County, Montana, and thereafter such combined Lots shall be treated as one for the purpose of applying these Protective Covenants; any such combination of Lots shall have a side Lot line set back requirement of 40 feet from the side lines of the combined Lot area.

viii. An easement 30 feet wide for the use as a green belt area and utilities is hereby established 30 feet inside the rear Lot line of Lots 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 of Block 4 as shown on the Plat within which no improvements of any kind, type or nature may be placed except for underground utilities and landscaping. However, property owners who landscape within these easements do so at their own risk.

**B. Multiple Dwelling Tracts**

i. Tract 1 on the Plat and any amendment thereto shall be used for condominiums, hostels, multiple dwellings, apartments, pensions, duplexes, overnight commercial accommodations, cooperative housing, recreation, sports, parks and the providing of buildings, parking, recreational and sporting facilities, and the installation of wells, pump houses or pipe lines for a water supply, except that the Tract shall not be used for auto or trailer courts, tourist camps, or any

other commercial use. Food services, restaurants, and bar facilities may be provided if available to the general public.

ii. Tract 2 on the Plat and any amendment thereto shall be used for condominiums, hostels, multiple dwellings, apartments, pensions, duplexes, overnight commercial accommodations, cooperative housing, recreation, sports, parks and the providing of buildings, parking, recreational and sporting facilities, and the installation of wells, pump houses or pipe lines for a water supply, except that the Tract shall not be used for restaurants, cafes, bars, auto or trailer courts, tourist camps, or any other commercial use. Food services may be provided, but such service shall be limited to those who are guests or owners of a unit on a multiple dwelling tract and such food services shall not be available or offered to the general public.

iii. No buildings, structures, construction, reconstruction, alterations or improvements on any of the above multiple dwelling tracts shall exceed 40 feet in height measured from the average level of finished grade, nor shall it exceed the height as set forth in the Zoning Regulations, whichever is stricter.

iv. Tract 2 may be further subdivided into smaller sites for the location of one or more multiple dwelling structures or complexes. However, the Owner must also receive approval under the applicable Zoning Regulations.

v. Plans for any improvements on any multiple dwelling tract shall provide for off-street parking which shall include at least two parking spaces for every dwelling unit or comply with the applicable Zoning Regulations, whichever is greater.

### **C. Recreation Tracts**

Tract A-1 on Plat H-36-A and any amendment thereto shall be used for recreation and sport activities which use shall include the placing, construction, reconstruction, alteration, or remodeling of buildings, structures and other improvements related or pertaining to such use, including without being limited to: playgrounds, parks, tennis courts, tennis buildings, health clubs, swimming pool, swimming pool building, skiing, ski trails, skeet and trap, baseball, playing fields, basketball courts, water wells, pipelines, maintenance and storage buildings, comfort stations and shelters, food services, restaurants, and bar facilities may be provided and available to the general public, together with such easements as the Owner of such tract may hereinafter designate, but in no event shall such construction, improvements, or easements, be inconsistent with these

Protective Covenants or detract from the use and development of the remainder of the real property.

Tract A-2, Lot 1 on Plat H-36-C and any amendment thereto shall be used for recreation and sport activities which use shall include the placing, construction, reconstruction, alteration, or remodeling of buildings, structures and other improvements related or pertaining to such use, including without being limited to: playgrounds, parks, tennis courts, tennis buildings, health clubs, swimming pool, swimming pool building, skiing, ski trails, skeet and trap, baseball, playing fields, basketball courts, water wells, pipelines, maintenance and storage buildings, comfort stations and shelters, together with such easements as the Owner of such Tract may hereinafter designate, but in no event shall such construction, improvements, or easements, be inconsistent with these Protective Covenants or detract from the use and development of the remainder of the real property.

Tract A-2, Lot 2-A on Plat H-36-E and any amendment thereto shall only be used for recreation and sport activities which use shall include the placing, construction, reconstruction, alteration, or remodeling of buildings, structures and other improvements related or pertaining to such use, including without being limited to: playgrounds, parks, tennis courts, tennis buildings, health clubs, swimming pool, swimming pool building, skiing, ski trails, baseball/softball, playing fields, basketball courts, skate park, skating rink, concert facilities, recreational facilities, pavilions, water wells, pipelines, maintenance and storage buildings, comfort stations and shelters. However, this Tract and any amendments thereto is hereby restricted in perpetuity for the use of The Big Sky Community Corporation, its successor or assigns, and the people of Gallatin County under the provisions of and in accordance with the Montana Open Space and Voluntary Conservation Easement Act, Title 76, Chapter 6, MCA.

**D. Water and Substation Tracts**

- i. The Tracts designated as Tracts H20 and H21 on the Plat and any amendments thereto are to be used as the site for water storage tanks for fire protection and a domestic water supply for the Big Sky County Water & Sewer District, No. 363, or its successors or assigns. Such use shall include the construction, reconstruction, maintenance, repair, and remodeling of a water storage tank or tanks and shall also provide for the installation of any pipes, utilities, pumps, machinery, roads, landscaping and any and all other equipment or facilities that may be necessary or appurtenant to use of the Tracts as a site for a water storage tank or tanks.
- ii. The Tract listed as the Montana Power Substation site on the Plat shall be used as an electrical service facility and which use shall include the construction,

reconstruction, maintenance, repair, alteration, or remodeling of a power substation and shall also provide for the installation of substation facilities, buildings, overhead and underground transmission of power lines, transformers, and other electrical equipment, roads, landscaping and any and all other equipment or facilities that may be necessary or appurtenant to use of the Tract as a site for a power substation.

**E. Green Belt Tracts**

Tracts B, C, D, E and F on the Plat and any subsequent amendments thereto shall be held by the Association, as open area for use for parks, trails, bridle paths, skiing and ski trails, agriculture, and/or recreation areas, together with improvements associated with such use and for pedestrian access to adjacent property but which use shall include, where necessary the installation of wells, water storage tanks, pump houses, or pipelines for a water supply, together with such other and additional easements as the Association may hereafter designate.

**F. Tracts I-A and II**

i. No building or improvement shall be placed, constructed, reconstructed, altered or remodeled on either Tract I-A (as shown on COS 972 on record with the office of the Clerk and Recorder of Gallatin County, Montana and any subsequent amendments thereto) or Tract II on the Plat and any subsequent amendments thereto except to provide for a single family dwelling, with either an attached or detached garage. Likewise, the BSAC, as provided in Article 4, may, in its discretion, allow for the construction of an Accessory Apartment either above a detached garage or an attached garage; and/or a Caretaker Residence; and/or a Guest House where the location of such and the size of the Tract are such that there is sufficient room for the same and it does not unreasonably interfere with the view, building sites, landscaping, elevations and general aesthetic considerations and factors of nearby Lots. Nothing herein requires the BSAC to approve any of the above uses (Accessory Apartment, Caretaker Residence, Guest House); it is solely based on the BSAC's discretion and the above criteria. In the event the BSAC does approve one or a combination of the above uses (Accessory Apartment, Caretaker Residence, Guest House), the Owner must also receive approval under the applicable Zoning Regulations. Any plans for any dwelling on either Tract shall provide for off-street parking for at least two vehicles. If plans for a dwelling include an Accessory Apartment, Caretaker Residence, Guest House or any combination thereof those plans shall also provide for off-street parking for those uses.

ii. Tract I-A may be further subdivided by the Owner thereof into not more than three separate, smaller Tracts for residential use only and for the erection of one single family dwelling with either an attached or detached garage on each separate Tract, each such small Tract to be not less than one acre in size. However, the Owner must still receive approval under the applicable Zoning Regulations.

iii. Tract II may similarly be further subdivided by the Owner thereof into not more than four separate, smaller Tracts for residential use only and for the erection of one single family dwelling with attached or detached garage on each separate Tract, each such smaller Tract to be not less than one acre in size. However, the Owner must still receive approval under the applicable Zoning Regulations.

### 3. EASEMENTS

- A. **Reservation of Easements.** Easements for roads, drainage, electricity, telephone, lighting, water, sewer, cable television and all other utilities, skiing, trails, bridle paths, pedestrian traffic, or any other service or utility shall be and are hereby reserved as shown on the Plat and any amendments thereto, as well as along the front, side and rear setback areas of all Lots in the Subdivision.
- B. **Requirement to Bury Utilities.** All utilities, pipe and service lines shall be buried.
- C. **Road Easements.** All road easements as shown on the Plat shall include a corresponding easement for drainage, electricity, telephone, lighting, water, sewer, cable television and all other utilities, skiing, bicycle, bridle paths and pedestrian traffic.
- D. **Landscaping Easements.** Easement areas may be landscaped by Owners so as to enhance their appearance so long as the landscaping does not interfere with the use of the real property as an easement. However, Owners who landscape within these easements do so at their own risk.
- E. **Ski Easements.** An easement is hereby provided for skiers to crossover Tracts 1, 2, A, B, C, D, E, and F, of the Plat and any subsequent amendments thereto, where not obstructed by permanent improvements, which may hereafter be constructed on said Tracts.

- F. **Chief Joseph Road.** Chief Joseph Road as specified on the Plat is dedicated to the public use as a secondary road to the point designated on the Plat. Thereafter, it ceases to be a public road and becomes an easement designated as Chief Joseph Trail for ingress and egress to Tracts I-A and II for the use and benefit of the Owners of these Tracts thereon and for use by the Association as a means of access to Tract E and other lands owned by the Association.

#### **4. ARCHITECTURAL COMMITTEE AND ARCHITECTURAL REVIEW**

- A. **Membership and Term.** There is hereby created the Big Sky Architectural Committee (hereinafter "BSAC"), which is a committee of the Association. Said BSAC is the same committee as that established and/or referred to in the covenants of other subdivisions created within the area defined by the Association's Jurisdiction, as well as the committee established in the Bylaws. The membership and term of the committee members on the BSAC, as referenced herein, shall be established in the Bylaws.
- B. **Powers and Duties** Along with such other powers and duties as enumerated in the Bylaws for the BSAC, the BSAC shall have the following authority:
- i. The BSAC shall have the authority to establish Design Regulations and such other reasonable rules and procedures as it deems necessary to carry out its functions, which rules, and procedures may not be inconsistent with the provisions of these Protective Covenants, the Articles or the Bylaws.
  - ii. The BSAC has the express authority by these Protective Covenants to regulate the location of any structures to be located on a Lot or Tract in this Subdivision. If no location is specified by the Owner thereof when his or her plans are submitted to the BSAC, the BSAC may select the location of the same for the Owner. The intent and purpose of this provision is to provide for those locations which, in the opinion of the BSAC, are best suited to each specific Lot and or Tract and do not interfere, or create the least interference, with residences on contiguous and nearby Lots in this Subdivision and those in Meadow Village subdivision, with regard to elevations, view, building site features, landscaping and factors and considerations of an aesthetic nature.
  - iii. The BSAC has the express authority by these Protective Covenants to review and accept or deny all plans for any construction, reconstruction, alteration, remodel, maintenance, and landscaping prior to construction or installation for property within the Subdivision.

- iv. The BSAC shall have the authority to approve or reject materials, designs and colors submitted with plans or the plans themselves if they are not compatible, or are inappropriate, with the rest of the Subdivision, the Design Regulations, or these Protective Covenants.
  - v. The Association and the BSAC through their authorized officers, employees, and/or agents shall have the right to enter any Lot or Tract upon twenty-four (24) hours notice to the Owner or Owner's agent for the purpose of ascertaining whether such Lot or Tract or the construction, erection, placement, remodeling or alteration of any improvement thereon is in compliance with the approved architectural or landscape plans approved by the BSAC. The BSAC, the Association or such officer, employee, or agent thereof shall not be deemed to have committed a trespass or wrongful act solely by reason of such action or actions under this part. Notice as provided under this part may be either in person, via telephone, e-mail, or in writing, provided such notice is documented.
  - vi. The BSAC shall have the authority to require reasonable fees to be paid with the filing of plans to offset expenses. In addition, the BSAC shall have the authority to set and require that Owners or their agent post certain deposits prior to commencing construction for the purpose of assuring that construction and landscaping will be completed within the time specified and in substantial compliance with the aesthetics of the approved architectural and landscape plans.
  - vii. The BSAC shall have the authority to revoke or suspend its approval and/or order the suspension or cessation of any construction or work in violation of these Protective Covenants or of any Design Regulations, rules or procedures established by the BSAC.
  - viii. In addition to the above powers and duties, the BSAC may have such powers and duties as delegated to it by the Board.
- C. **Submission of Plans before Lot and/or Tract Alterations.** No building, construction, reconstruction, alteration, remodel, landscaping, parking, fence, wall or other improvement shall be placed, constructed, erected, repaired, restored, reconstructed, painted, altered, remodeled, added to or maintained on any Lot or Tract until drawings, plans and specifications (which must have been prepared by a licensed architect where applicable for construction, reconstruction, alteration, or remodeling) and such other information as the BSAC may reasonably require, including, without being limited to: colors, building materials and models, have been submitted to, and approved by, a majority of the BSAC in writing; nor may

the same be commenced until the BSAC shall have issued its authorization allowing for such improvements. Simultaneously with the filing of any initial building plans for any Lot and/or Tract the Owner thereof must also submit to the BSAC a landscape plan. The landscape plan must set forth in detail the landscaping to be installed, placed or planted on such Lot or Tract, including paths, walks, shrubs, trees, rocks, fences, walls or any feature to be incorporated into a landscape design or plan which must serve to enhance the appearance of the site and such landscape plan must be approved before construction commences. All improvements, construction, reconstruction, alterations, remodeling or any activity requiring the approval of the BSAC must be completed in substantial compliance with the plans and specifications approved by the BSAC and shall be in full compliance with all of the applicable terms and provisions of these Protective Covenants.

- D. **Construction and Landscaping.** All construction shall be diligently prosecuted to completion and, shall in any event be completed within eighteen (18) months of commencement unless specific written extension is granted by the BSAC. No construction material shall at any time be placed or stored so as to impede, obstruct or interfere with pedestrian or vehicular traffic (including but not limited to emergency services) and no construction materials shall be placed or stored on Lots or Tracts for a period not to exceed 30 days following substantial completion of construction as shall be determined by the BSAC. The landscaping provided for in the landscape plan must be completed within eighteen (18) months of commencement of construction unless specific written extension is granted by the BSAC.
- E. **Liability.** The standards and procedures established by this Article or the BSAC are intended to enhance the overall aesthetics of the Subdivision. Neither the BSAC, the individual members, or the Association shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring the appropriateness of soils, drainage, and general site work. Neither the Association, the Board, the BSAC or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit, Lot or Tract within the real property. In all matters, the BSAC and its members shall be defended and indemnified by the Association.

## **5. OWNERS ASSOCIATION, MEMBERSHIP, AND VOTING RIGHTS**

- A. **Association.** The owners association for Sweetgrass Hills Subdivision shall be the Big Sky Owners Association, Inc. Pursuant to Montana Law, the Association shall operate under the Bylaws.
- B. **Membership.** All Owners of a Unit, Lot, or Tract shall automatically, upon becoming the Owner, be a Member of the Association, and shall remain a Member thereof until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. All Owners in the Subdivision, as Members of the Association, shall be bound by the provisions of the Articles and Bylaws of the Association, copies of which are made a part hereof by reference. Membership shall be appurtenant to and may not be separated from the ownership of any Unit, Lot or Tract subject to assessment. It is the responsibility of the grantor to contact the Association and provide it with a copy of the recorded document of transfer evidencing the grantee's name and accurate mailing address. Membership shall begin and the Membership Interests shall vest upon recording a deed. Membership shall terminate and Membership Interests shall be revoked upon a Person divesting record ownership of Unit, Lot or Tract. No Member may withdraw nor be expelled while being an Owner. A Mortgagee does not have membership rights until it obtains title to the Unit, Lot or Tract by foreclosure or deed in lieu thereof.
- C. **Exercise of Voting Rights.** Each Membership Interest shall have and exercise such voting rights as set forth in the Bylaws.

## **6. ASSESSMENTS**

- A. **Liens and Assessments: Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Unit, Lot or Tract, within the Subdivision, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments and (2) special assessments. Annual assessments shall be billed on an annual basis as established in the Bylaws and notice of the same shall be mailed to each Owner as established in the Bylaws. All assessments become due 30 days after the date of mailing notice of such assessments. All assessments together with interest, costs, and reasonable attorney's fees, shall be a charge on the land, run with the land and shall be a continuing lien upon the property against which each such assessment is made.

Failure of the Board to set the annual assessment amount or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay these assessments. In such event, each Owner shall continue to pay the annual assessments on the same basis as during the last year for which an annual assessment was made, if any, until a new budget becomes effective and a new annual assessment is levied pursuant thereto. Any such budget may include as an expense item any shortfall in amounts previously collected.

No Owner may exempt himself/herself from liability for any assessments by non-use of or abandonment of his/her Unit, Lot or Tract, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon request, the Association shall furnish to an Owner or his/her title company or mortgage company written (mailed, e-mailed, or faxed) or oral verification of the amount of such assessment owing and whether the Owner has paid such assessment. The Association may require the advance payment of a reasonable processing fee for the issuance of such verification.

- B. **Annual Assessments.** The Board shall establish and levy annual assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. The annual assessments shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair.
- C. **Special Assessments.** In addition to the annual assessments authorized above, the Board, at any time, may levy and establish the due dates for a special assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate.
- D. **Uniform Rate of Assessment.** Annual and Special Assessments for Members in this Subdivision shall be fixed at the same uniform rate for each Unit, Lot, and Tract. That is, each Unit, Lot, and Tract shall be assessed the same amounts

regardless of size, and may be collected on a basis to be determined by the Board in the Bylaws.

- E. **Restrictions on Increases in Annual or Special Assessments.** The Board may not increase an annual assessment or levy a special assessment on any Unit, Lot or Tract except as set forth in the Bylaws.
- F. **Effect of Nonpayment of Assessments and/or Fines: Remedies of the Association.** Any assessment or fine not paid within sixty (60) days after the due date shall be delinquent, shall incur a late payment penalty in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law, and shall bear interest at a rate established by the Board which shall not exceed the maximum interest rate authorized by law until paid. Failure to pay within sixty (60) days of the due date will result in the Association recording a lien against the property being assessed or bringing an action at law or both. Suit to recover a money judgment for unpaid assessments, fines, late charges, interest and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The Association may record that lien with the office of the Clerk and Recorder, Gallatin County, Montana, or bring an action at law to collect the lien or foreclose the lien against the real property in the same manner as a mortgage on real property, and the Association shall be entitled in any such actions or foreclosure proceedings to recover its costs, expenses and reasonable attorneys' fees. The Association, acting on behalf of the Owners, shall have the power to bid for the Unit, Lot, or Tract at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. During the period a Unit, Lot, or Tract is owned by the Association following foreclosure, no right to vote shall be exercised on behalf of the Unit, Lot, or Tract and no assessment shall be assessed or levied on the Unit, Lot, or Tract. The Board may authorize the execution and recordation of a deed conveying title to the Unit, Lot, or Tract which deed shall be binding upon the Owners, their successors, and all other parties.

## **7. PROPERTY USE RESTRICTIONS**

- A. **Water and Sewer.** Within this Subdivision, except for residences in Tract I-A, all improvements or structures designed for occupancy or use by humans shall be connected to the Big Sky County Water & Sewer District No. 363, and no private well, septic tank, leaching field or other private sewage treatment facility shall be used or installed in the Subdivision, unless approved by the Big Sky County

- Water & Sewer District No. 363. Such facilities, however, being expressly permitted for residences in Tract I-A only.
- B. **Trash and Garbage.** No trash, waste, garbage, litter, junk, or refuse shall be thrown, dumped or left on any portion of the Subdivision and no burning of the same shall be permitted. No incinerator or other device for burning of trash or garbage shall be installed or used except as may be approved by the BSAC. Each Owner shall provide suitable receptacles for the containment and collection of trash and garbage, which must be enclosed and comply with the Zoning Regulations. Nothing contained herein shall be construed to prohibit or deny the installation or use of wood burning fireplaces, in accordance with the Design Regulations.
- C. **Signs.** All signs, real estate signs, billboards, posters, displays, advertisements or any structures relating thereto are prohibited unless they have received the written approval of the BSAC prior to installation or use, or they are a permitted sign under the Design Regulations. This restriction shall also include signs for identification of streets, residences, places of business and directional or location markers or signs. The Owner must also receive approval under the applicable Zoning Regulations.
- D. **Animals.** Animals such as dogs, cats, birds or horses are allowed in the Subdivision as pets only and so long as they are strictly controlled by their Owners to prevent them from becoming a nuisance to the neighbors or harassing wildlife. Kennels, stables or other facilities for the keeping or retention of animals shall be restricted to areas so designated and approved by the BSAC. The commercial keeping, breeding, care, or raising of any animal is forbidden. No animal shall be allowed on a prolonged basis to howl, bark, yelp or utter other annoying noise. If a particular animal or animals shall, in the discretion of the Board, become a nuisance, the Board shall have the authority to require that the same be kept tethered, confined on the Owner's property or kept inside the Owner's residence and the Board may further require that when the said animal or animals are taken from the said property such animals must then be kept on a leash or bridle and must be under the Owner's control at all times. Owners not controlling their animals or abiding by the above shall be fined and at the discretion of the Board, nuisance animals will be removed from the Subdivision by the Owner.
- E. **Environment.** Every attempt shall be made to preserve and protect the environment indigenous to the area. Disturbance, destruction or damage to all plant life, all animal life and their natural habitats, streams, ponds, springs,

- underground aquifers, soils and rocks is strictly forbidden except where absolutely necessary for the placement or construction of improvements within the Subdivision or for the proper and orderly development of the real property. No existing tree may be cut, removed, or voluntarily destroyed by any party, including Owners, without obtaining the prior written approval of the BSAC. Such removal must be for aesthetic purposes, to promote safety, to facilitate construction or as a part of a landscape plan. All areas not utilized as sites for improvements where disturbed by construction or any human activity shall be returned as quickly as possible to their natural condition and replanted with native plant life except where otherwise utilized for lawns, gardens or exterior living areas.
- F. **Mining.** No mining, quarrying, excavation, oil drilling, or mining development of any kind shall be allowed in or within the Subdivision except for such excavation as may be necessary in connection with the construction or placing of improvements thereon in accordance with the terms and restrictions of these Protective Covenants.
- G. **Temporary Structures and Storage.** No trailer, mobile home, basement, tent, shack, garage or camper shall be used at any time, on the real property, as a residence or a place for habitation or sleeping, temporarily or permanently. No trailer, boat, mobile home, snowmobile, motorcycle, camper or any structure of a temporary nature shall be permitted to be kept or stored within the Subdivision unless within a fenced or screened parking space, which must be approved by the BSAC. However, nothing in this section prevents the BSAC from establishing a policy to permit the temporary parking of a trailer, boat, mobile home, motorcycle, or camper within the Subdivision for a set limited amount of time each month, with the prior written approval of the BSAC. The BSAC reserves the right to revoke its approval.
- H. **Recreational Vehicles.** No snowmobiles, "ATV-like" vehicles, or helicopters shall be operated within the boundaries of the Subdivision for any purpose, with the exception that such vehicles may be used and operated only for: maintenance of public roadways and spaces (including but not limited to parks, trails, and road right of ways); emergencies or safety purposes; and snow mobiles and/or groomers may be used by the Lone Mountain Ranch or its successor in interest or assigns to groom and/or maintain such designated cross country ski trails.
- I. **Nuisance.** No activity shall be conducted in any Lot or Tract that constitutes a nuisance or unreasonably interferes with the use or quiet enjoyment of the Occupants of any other Lot or Tract. No noxious, illegal, or offensive trade or

activity shall be carried on upon any Lot or Tract, nor shall anything be done there which may be, or may become, an annoyance or nuisance to the Subdivision and surrounding area. No Owner shall permit anything to be done or kept in his or her Lot or Tract that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal agency.

- J. **Television and Radio Antennas.** No exterior visible television or radio antennas are permitted in the Subdivision. However, those dishes that are one meter or less used for satellite television are permitted in the Subdivision, but only in compliance with the Design Regulations.
- K. **Weeds and Ground Cover.** The Owner of each Lot and/or Tract shall control or eliminate all noxious plants on his or her Lot and/or Tract, provided, however, that he/she shall only use herbicide approved for domestic use and/or approved by the State of Montana and/or Gallatin County for use around waterways as required. Ground cover shall be maintained and replaced in a timely manner for any Lot or Tract alterations.

## 8. ENFORCEMENT

- A. **Procedure.** Each Owner or his/her tenants, guests and/or invitees of any Unit, Lot or Tract shall comply with these Protective Covenants, and as lawfully amended from time to time. Each Owner shall be responsible to the Association for compliance with the foregoing by his/her tenants, guests and/or invitees. The Association shall have the right (but not the obligation) to enforce these Protective Covenants, through its procedure adopted by resolution of the Board, abatement of the violation by the Association, or by proceedings either at law or in equity against any Person(s) violating or attempting to violate any of these Protective Covenants. Legal proceedings may be either to restrain violation of the Protective Covenants or to recover damages or both. Such procedures adopted by the Board to enforce these Protective Covenants shall include provisions for due process (including but not limited to notice and an opportunity to be heard at a regular meeting of the Board) for Person(s) violating or attempting to violate any of these Protective Covenants.
- B. **Discretion.** The decision to have the Association pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- i. the Association's position is not strong enough to justify taking any or further action; or
- ii. the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or
- iii. although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- iv. it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be deemed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule, nor shall it preclude any Owner from taking action at law or in equity to enforce these Protective Covenants.

- C. **Costs of Enforcement.** Costs incurred for enforcing the provisions of these Protective Covenants and/or the Bylaws (inclusive of giving notice of the violation), costs of correcting the defect or undoing the violation, if undertaken by the Association, or any fines levied against the Owner after the Owner or his/her tenants, guests and/or invitees is determined by the Board to be in violation of these Protective Covenants and/or Bylaws shall be paid by the Owner. Any costs incurred for enforcing the provisions of these Protective Covenants and/or the Bylaws, for correcting the defect or undoing the violation, or fine assessed against the Owner that is not paid within sixty (60) days as provided for in Article 6, Part F above, shall result in a lien being recorded against the Unit, Lot, or Tract and/or the Owner's interest therein, such lien to be enforceable by sale under the laws of the State of Montana. Such lien will be recorded in the office of the Clerk and Recorder, Gallatin County, Montana.

Should any lawsuit, arbitration or other legal proceeding be instituted by the Association against an Owner alleged to have violated one or more of the provision of these Protective Covenants and/or the Bylaws and should the Association be wholly or partially successful in such proceeding, the offending Owner shall be obligated to pay the costs of such proceeding, including reasonable attorney's fees, costs and cost of collecting the judgment.

- D. **Delegation.** The Board may delegate any of its obligations with respect to enforcement as set forth above to its Staff or any committee of the Board, including but not limited to the BSAC; except that any decision to pursue or not pursue any legal proceeding may not be delegated, and shall be determined by the Board.
- E. **Remedies Cumulative.** Each remedy provided under this Article 8, are cumulative and not exclusive.
- F. **Joint and Several Liability.** In the case of joint ownership of a Unit, Lot, or Tract, in any form, the liability of each Owner thereof in connection with the liabilities and obligations of Owners as set forth in or imposed by these Protective Covenants shall be joint and several.

## 9. AMENDMENT

These covenants, or any portion thereof, may be amended, abandoned, terminated, modified or supplemented at any time by the written consent or certification thereof, duly recorded with the officer of the Clerk and Recorder, Gallatin County, Montana, of fifty-one percent (51%) of the Membership Interests within the Subdivision. Proposed amendments can be drafted and put to a vote of the Members within the Subdivision either by the Board or any Member within the Subdivision.

## 10. SEVERABILITY

A determination of invalidity of any one or more of the covenants or conditions hereof by judgment, order or decree of a court shall not affect in any manner the other provisions hereof, which shall remain in full force and effect.

## 11. ZONING

Sweetgrass Hills Subdivision is part of the Gallatin Canyon/Big Sky Planning and Zoning District. Compliance with these covenants and receiving BSAC approval as detailed in Article 4 above, does not assure compliance with the Zoning Regulations.

Amended and Restated Protective Covenants for Sweetgrass Hills Subdivision,  
Big Sky, Gallatin County, Montana dated April 1, 2008- FOR VOTE

IN WITNESS WHEREOF, we certify that these Amended and Restated Protective Covenants of Sweetgrass Hills Subdivision have been adopted by a vote of the owners of seventy-five percent (75%) of the privately owned land included within the boundaries of Sweetgrass Hills Subdivision and these Amended and Restated Protective Covenants of Sweetgrass Hills Subdivision hereby supersede those covenants dated July 12, 1972, recorded at the office of the Clerk and Recorder for Gallatin County, Montana on July 18, 1972 at Film 14, Page 1746 and subsequently amended on July 1, 1976 at Film 33, Page 1139; January 17, 1984 at Film 81, Page 1514; April 23, 1984 at Film 82, Page 3537; May 9, 1986 at Film 91, Page 5098; May 15, 1986 at Film 92, Page 190; and September 3, 1991 at Film 117, Page 4741.

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

and: \_\_\_\_\_  
\_\_\_\_\_, Secretary

Amended and Restated Protective Covenants for Sweetgrass Hills Subdivision,  
Big Sky, Gallatin County, Montana dated April 1, 2008- FOR VOTE

STATE of MONTANA )

County of Gallatin ) : ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_ **as the Chairman of the Big Sky Owners Association, Inc.** and acknowledged to me that he executed the same on behalf of the corporation pursuant to the power and authority vested in him.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial seal the day and year written above.

\_\_\_\_\_  
Mindy C. Nowakowski  
Notary Public for the State of Montana  
Residing at: Big Sky, Montana  
My commission expires: October 12, 2008

STATE of MONTANA )

County of Gallatin ) : ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_ **as the Secretary of the Big Sky Owners Association, Inc.** and acknowledged to me that she executed the same on behalf of the corporation pursuant to the power and authority vested in her.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial seal the day and year written above.

\_\_\_\_\_  
Mindy C. Nowakowski  
Notary Public for the State of Montana  
Residing at: Big Sky, Montana  
My commission expires: October 12, 2008