

AMENDMENT AND RESTATEMENT TO PROTECTIVE COVENANTS  
OF BIG SKY OF MONTANA INC.  
MOUNTAIN VILLAGE, CASCADE SUBDIVISION  
Madison County Montana, Hereinafter to be Known as:

PROTECTIVE COVENANTS FOR CASCADE SUBDIVISION

WHEREAS, Big Sky of Montana, Inc. filed PROTECTIVE COVENANTS OF BIG SKY MONTANA INC. MOUNTAIN VILLAGE, CASCADE SUBDIVISION, Madison County, Montana, (Covenants) which Covenants were recorded on April 27, 1973 in the Records of Madison County, Montana in Book 237 at page 792 and following, and which Covenants have been amended several times by the recording of Amendments; and

WHEREAS, BOYNE USA, INC, is the successor in interest of Big Sky of Montana, Inc. and is the owner of in excess of seventy-five (75%) of the privately owned land included in the boundaries of the said Mountain Village Cascade Subdivision (Cascade Subdivision), and is the Developer; and

WHEREAS, pursuant to an Overall Development Plan developed by Boyne USA, Inc. and approved by the Madison County Commissioners, Boyne USA, Inc. is proceeding to develop the Mountain Village at Big Sky, Montana, pursuant to the said Plan, including Cascade Subdivision. As a part of said Overall Development Plan, the plat(s) filed with the Clerk and Recorder of Madison County for Cascade Subdivision are being amended to rearrange and reconfigure Cascade Subdivision, including the aggregation and adjustment of the boundary lines of some of the lots, tracts, areas, and open spaces, the division of some of the lots and tracts, the redesignation of some of the lots, tracts, areas, open space and the realignment of the road system and other easements in the manner shown and designated on Exhibit A attached hereto. The amended plats of Cascade Subdivision have received preliminary plat approval from the Madison County Commissioners. The amended plats will be filed with the Clerk and Recorder of Madison County as Madison County's conditions for approval for each amended plat are completed.

In accordance with the said Overall Development Plan and the preliminary plat approval, the Covenants for Cascade Subdivision hereinabove mentioned are being restated and amended as set forth herein. These Covenants will apply to the lots, tracts, areas, and open space of Cascade Subdivision as shown, designated, and delineated on Exhibit A and as described in Exhibit B. No lots or tracts, areas, open spaces which will be changed or redesignated in accordance with Exhibit A for which an amended plat has not been filed can be conveyed or transferred by the Developer, Boyne USA,

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Inc., until the final amended plat showing and designating such changed or redesignated lots, tracts, areas, or open spaces is filed with the Clerk and Recorder of Madison County. Notwithstanding, the foregoing, the Developer, Boyne USA, Inc., may convey or transfer lots, trails, open spaces or areas which have not been changed or redesignated and the Developer may grant such easements for roads and utilities in Cascade Subdivision as will be necessary to implement the plan shown on Exhibit A and to satisfy the conditions of the said preliminary plat approval.

WHEREAS, BOYNE USA, INC., pursuant to said Covenants, Paragraph 15, Amendment, does hereby amend and restate the said Covenants and Amendments thereto upon the property, lots, tracts and areas described in the plat(s) for Mountain Village, Cascade Subdivision and described in all amendments and supplements to said plat(s) as follows:

NOW THEREFORE, BOYNE USA, INC., DOES HEREBY ESTABLISH, DEDICATE, DECLARE, PUBLISH AND IMPOSE upon the property herein described the following Protective Covenants which shall run with the land and shall be binding upon and be for the benefit and value of the property and the owners thereof and shall be binding upon the heirs, successors and assigns of the owners of said property and shall be for the purpose of maintaining a uniform and stable value, character, architectural design, use and development of the property.

This Amendment and Restatement to Protective Covenants shall replace and supersede the original Covenants and all amendments thereto. This Amendment and Restatement shall change the name of the Protective Covenants to "Protective Covenants for Cascade Subdivision". These Covenants shall apply to the entire premises and to all improvements placed or constructed thereon and unless these Covenants are amended, shall be in existence in perpetuity unless otherwise terminated by operation of law. Existing improvements and uses, and improvements under construction as of December 1, 1997, which do not comply with these Restated 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 Protective Covenants. In the event any of these Covenants are declared invalid or unenforceable, the other covenants shall remain in full force and effect.

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I.  
DEFINITIONS

The following terms as used in these Covenants are defined as follows:

- A. "Association": The Cascade Owners' Association (COA).
- B. "Big Sky": The Developer of Cascade Subdivision, presently Boyne USA, Inc., and its successors and assigns.
- C. "BSOA": The Big Sky Owners Association, Inc., a Montana nonprofit corporation operating pursuant to Section 35-2-101, et seq., MCA, its successors or assigns.
- D. "BSAC": Means Big Sky Architectural Committee which is a committee of the Big Sky Owners' Association and its successors and assigns.
- E. "Building Envelope": Means the area designated for the location for building and structures on certain lots and tracts as shown on Exhibit A.
- F. "Boyne USA, Inc.": Developer of the properties in the Cascade Subdivision and its, successors and assigns.
- G. "BSOA Board": The Board of Directors of the Big Sky Owners Association.
- H. "BSOA Bylaws": The Bylaws of the BSOA, as amended from time to time.
- I. "Cascade Subdivision": Means the lots, tracts, open spaces and other real property shown on Exhibit A and as described in Exhibit B attached hereto and as described on the plat(s), amended plats and supplemental plats of Cascade Subdivision.
- J. "Committee": Means the Architectural Committee.
- K. "Covenants": This declaration of Protective Covenants for Cascade Subdivision as amended from time to time.
- L. "Design Regulations": A manual containing the rules, regulations and restrictions governing construction and improvements in the BSOA/BSAC/COA jurisdiction, formally adopted by the Committee, BSOA or COA in accordance with these Covenants or the BSOA Bylaws.

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M. "Improvement": Any building, outbuilding, attachments to buildings, road, driveway, parking area, fence, retaining wall, other wall, hedge, pole, antenna, or any structure of any kind.

N. "Jurisdiction": The area of properties defined in the BSOA Bylaws, over which the BSOA and the Committee (BSAC) have authority.

O. "Tract", "Lot" or "Area": A legally described division of real property created pursuant to the Cascade Subdivision plat(s) and amended plats recorded in the public records of Madison County, Montana, and shown on Exhibit A. The term "Area" shall include open space.

P. "Overall Development Plan": A plan developed by Boyne USA, Inc., and approved by the Madison County Commission, indicating appropriate development of all property within each existing or future subdivision, in the Mountain Village as amended from time to time.

Q. "Member": Any owner of a lot, tract or area within Cascade Subdivision and who by these Covenants is also a member of the Cascade Owners' Association.

R. "Owner": One or more persons who hold the record title to any unit, lot, area or tract of land within the Subdivision and including a purchaser on a contract shown in the public records pursuant to a recorded abstract of contract or similar document, excluding any person holding a mortgage or an interest merely as security for the performance of an obligation.

S. "Parcel": A portion of real property.

T. "Permit": A Covenant Compliance Permit, which states that the Committee has approved the plans for the improvement and the owner may proceed with the project as approved, if appropriate approval has also been obtained from other relevant jurisdictional authorities.

U. "Plat" or "Plats": Means the original subdivision plat or plats of Cascade Subdivision, Blocks 1 through 6, and existing and future amendments to said plat and plats filed with the Clerk and Recorder of Madison County, Montana.

V. "Premises": The property within Cascade Subdivision.

W. "Subdivision": Means Cascade Subdivision as defined by the subdivision plat(s) and amendments thereto on file in the public records of Madison County, Montana.

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- X. "Open Space": The areas shown on Exhibit A as open space.
- Y. "Plans": The improvement drawings, plans, specifications and other information required to be submitted to the Committee and approved by it before the construction of any improvement may be commenced.
- Z. "Record" or "Recording": Means the documents filed of record with the Clerk and Recorder of Madison County, Montana.
- AA. "Record Title": Means the records of the Clerk and Recorder of Madison County showing the owner of real property.
- BB. "Unit": A condominium unit which is a legally described division of real property created pursuant to a Condominium Declaration and recorded in the public records of Madison County, Montana, or a cooperative or other multi owner building in which an owner is entitled to the title, long term lease, or possession right of a separate unit for such owner's exclusive use which can be sold or transferred to another without the consent of the other unit owners.
- CC. "COA": Cascade Owners' Association, its successors or assigns.
- DD. "COA Board": the Board of Directors of the Cascade Owners' Association as established in these Covenants.

## II.

### USE

#### A. RESIDENTIAL LOTS OR TRACTS - SINGLE FAMILY

##### Block 1:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13,  
14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25,  
26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36,  
37, 38, 39, 40, 41, 42, 43, 44, 45 & Tract 22

##### Block 2:

Lots 80A, 83A, 86A, 88A, 91A, 93A, 96A, 105A, 108A,  
109A, 110A, 111A, 114A, 120A, 122A, 124A, 126A,  
128A

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## Block 3:

130A, 132A, 134A, 136A, 138A, 140A, 142, 143A,  
 146A, 149A, 151A, 153A, 157A, 160A, 162A, 164A,  
 165A, 166A, 167A, 168A, 169, 170, 171, 172A, 173A,  
 174, 175, 179A, 182A, 184A, 186A, 188A, 190A, 192A,  
 194, 195A, 197A, 199A, 201A, 203A, 204A, 205A,  
 206A, 208A, 211A, 213A, 214A, 217A, 218A, 221A,  
 223, 225A, 227A, 229A, 231, 232A, 234A, 235A, 236A,  
 241, 243, 244, 247, 248, 249, 253A, 254A, 255A,  
 261, 262

Lots 238, 239, 240, 242, 245, 246, 250, 251, 252,  
 257, 258, 259 and 260

## Block 4:

Lots 264, 266, 268A, 270A, 272A, 273A, 275A, 277,  
 278, 279, 280, 281, 282, 283, 284, 287A, 289A, 293,  
 294, 296, 301A, 303, 306

Lots 263, 265, 267, 285, 286, 291, 292, 299, 300,  
 304, 305,

## Block 6:

Lot 332, 333, 334, 335, 336, 337, 338, 339, 340,  
 341, 342, 343, 344, 345, 346, 347, 348, 349, 350,  
 351, 352, 353, 354, 355, 356, 357, 358, 359, 360,  
 361, 362 and 363

shall be used for one single family residence only.

B. RESIDENTIAL LOTS, TRACTS AND AREAS - SINGLE FAMILY OR MULTI  
 FAMILY CONDOMINIUMS

## Block 2:

Lots 46A, 47, 48A, 50A, 52A, 54A, 57A, 59A, 62A,  
 66A, 68, 69, A13, 71A, 74, 75, 76A

## Block 5:

Lots 1A, 2A, 2B, 3A, 4A, 4B, 5A, 6A, 6B, 7A, 7B,  
 8A, 9A, 10A, 10B, 10C, 10D, 11A, 11B, 11C, 11D, Lot  
 307A, 309, 310A, 312A, 314A, 314B, 315A, 317A, 322,  
 323

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## Block 6:

Lot 324, 325, 326, 327, 328, 329, 330, 331, Area 12, Tract G

shall be used for single family residences or residential multifamily condominium units.

C. SPECIAL PROVISIONS FOR RESIDENTIAL LOTS, TRACTS AND AREAS

1. Tract 12A and 12B may be used only for bed and breakfast establishment or a single family residence.

2. Except as herein set forth, no building, structure or improvement shall be placed, constructed, reconstructed, altered or remodeled on any residential single family lot or tract except one single family residence and single family residential appurtenances which may include an attached guest room and attached garage or carport. Any plans for a residence on any lot shall provide for off-street parking for at least two vehicles.

3. The Architectural Committee, as provided in paragraph IV below, may, in its discretion, allow a variance for the construction of a detached garage and/or a detached one bedroom guest unit or an apartment above an attached or detached garage which may be rented, where the location of such additional structure and the size of the lot are such that there is sufficient room for the same and the structures do not unreasonably interfere with the view, building sites, landscaping, elevations and general aesthetic considerations and factors of nearby lots.

4. Each single family residence 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 below ground level and exclusive of any apartment allowed above an attached or detached garage. The multifamily residential condominium units allowed shall not have a square foot limitation.

5. No building, structure, alteration or other improvement constructed or placed upon a lot used as a single family residential lot shall exceed 28 feet in height measured from the highest roof ridge to the average level of the finished grade adjacent to the building or improvement. When the plans indicate that the finished grade will deviate from the original grade, the Architectural Committee may, in its

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discretion, deny a Permit if the height of the building is more than 28 feet above the original grade and unreasonably interferes with the view, building sites, elevations and general aesthetic considerations and factors of nearby lots and the subdivision as a whole. No building, structure, alteration or other improvement constructed or placed on a lot used for a multifamily residential condominium units shall exceed 40 feet in height.

6. The following definitions shall apply when determining the minimum setbacks for residences, buildings and structures on Residential lots, tracts and areas (as designated by subparagraphs II-A, II-B and II-C-1):

- a. "Lot lines" means the boundary of every residential lot, tract and area.
- b. "Front" lot lines shall be designated as the lot lines adjacent to a road unless a lot, tract or area is adjacent to more than one road, in which case, the "front" lot line shall be designated as the lot line adjacent to the road which the lot's, tract's or area's address is determined from.
- c. "Rear" lot lines shall be the lot lines opposite and most distant from the front lot line and, in the case of an irregular or triangular shaped lot, tract or area, a line ten feet in length within the lot, tract or area, parallel to and at the maximum distance from the front lot line.
- d. "Side" lot lines shall be any lot line not a front lot line or a rear lot line.

All residences, buildings and structures shall be erected, placed, constructed, reconstructed, altered or remodeled within the designated building envelope shown as a circle with a radius on the lots or as an enclosure showing the setback requirements as shown on Exhibit A. If there is not a designated building envelope for a residential lot, tract or area, then the following setbacks shall apply, that is, no building or structure shall be erected, placed, constructed, reconstructed, altered or remodeled so as to be less than 25 feet from the front lot line, less than 20 feet from the side lot line or rear lot line, providing further that a corner lot shall have a 30 foot setback from the side lot line adjacent to roads. The Architectural Committee may approve moving the building envelope on a lot or adjusting a setback upon

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application of the owner and upon showing that the movement of the building envelope or setback will not substantially affect the view of other lot owners or adversely affect the plan and aesthetics of the subdivision. The Architectural Committee may allow up to a two foot roof overhang to encroach over the airspace on a setback.

7. No residential lot, tract or area shall be subdivided in any manner. Two or more contiguous whole residential lots, tracts or areas, if owned by the same record owner, may be combined to constitute one lot. The owners of adjacent lots, tracts or areas may agree to a boundary line adjustment between their respective lots, tracts or areas to make minor adjustments to their respective boundary lines to accommodate construction of improvements or to adjust setbacks or building envelopes, or to include a portion of a third lot, tract or area adjacent to such owners' lots, tracts or areas. However, any owner or owners proposing a combination of lots, tracts or areas, or a boundary line adjustment must first make application to and obtain the approval of the Architectural Committee and Madison County Commissioners and then record the appropriate survey plat with the Clerk and Recorder's office of Madison County, Montana. Thereafter, such combined lots, tracts or areas shall be treated as one for the purpose of applying these Covenants; any such combination of lots, tracts or areas shall have a setback requirement of 40 feet from the side lines of the combined parcel.

8. In connection with the location of buildings and structures within the building envelope or within the setback requirements, the owner shall show the proposed location on the plans submitted to the Architectural Committee, who shall have the authority to review the location of the building or structure, taking into consideration the size, shape and physical characteristic of the building, structure and topography of the lot. The Architectural Committee may condition its approval upon relocating the building or structure within the building envelope or setback to a more suitable location. The intent and purpose of this provision is to provide for those locations which, in the opinion of the Committee, are best suited to each specific lot and do not interfere and create the least interference, with residences on contiguous or nearby lots or tracts in this subdivision, with regard to elevations, view, building site features, landscaping and other factors or considerations of an aesthetic nature.

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D. COMMERCIAL AND MULTIPLE DWELLING TRACTS AND UTILITY TRACTS

1. Multiple dwelling tracts 1, 2A, 2B, 3A, 3B, 5B, 5C, 5D, 5E, 5F, 5G, 5H, 6, and 7B may be used for condominiums, hostels, apartments, duplexes, overnight commercial accommodations, motels, lodges, bed and breakfast, cooperative housing, recreational and other multiple dwelling units, parks and the construction of buildings and structures appurtenant to such use; parking and the installation of wells, pump houses, or pipelines for a water supply and distribution system. The tracts shall not be used for auto repair shops, trailer courts, automobile service stations (except as hereinafter allowed on Tracts 6 and 5G), tourist camps, or any other similar commercial use. Food and beverage services within the allowed buildings may be provided for service to the general public.

2. Density for multiple dwellings shall not exceed 20 units per acre except for Tracts 5E and 5F. However, if housing facilities erected on a tract or within a building on a tract for employees of the owner or owners or lessees of such tract, such employee housing units shall not be included in or limit by the permitted unit density set forth above. Dining facilities may be included in any building erected for employee housing.

3. The following definitions shall apply when determining the minimum setbacks for buildings and structures on Commercial and Multiple Dwelling and Utility Tracts (as designated in sub-paragraph II-D):

- a. "Tract lines" means the boundary of every tract.
- b. "Front" tract lines shall be designated as the tract lines adjacent to a road unless a tract is adjacent to more than one road, in which case, the "front" tract line shall be designated as the tract line adjacent to the road which the tract's address is determined from.
- c. "Rear" tract lines shall be the tract lines opposite and most distant from the front tract line and the common tract line between Tracts 3A and 3B.
- d. "Side" tract lines shall be any tract line not a front tract line or a rear tract line.

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The setback requirements for buildings and structures on the Commercial and Multiple Dwelling and Utility Tracts are as follows: Buildings and structures shall be located within the designated building envelope shown on Exhibit A. Unless otherwise allowed by these Covenants, buildings and structures shall not be placed closer than 10 feet from the side tract lines, 15 feet from the front and rear tract lines, 25 feet from the tract lines along Sitting Bull Road and 20 feet from the tract lines along Moose Ridge Road and Turkey Leg Road. The setback distances from Sitting Bull Road, Moose Ridge Road and Turkey Leg Road shall control over any conflicting setback distance. The Architectural Committee may allow up to a two foot roof overhang to encroach over the airspace on a setback.

When the owner submits plans to the Architectural Committee for buildings and structures, the plans will show the location of the buildings or structures within the designated building envelope or setbacks. The Architectural Committee will have the authority to review the location of the building or structure taking into consideration its size, shape and other physical characteristics and the topography of the tract and the Committee may condition its approval upon relocation of the building or structure to a more suitable site on the tract. The intent of this provision is to provide for those locations which are in the opinion of the Committee are best suited to each specific tract and do not interfere and create the least interference with buildings and structures on adjacent or nearby tracts or lots in the subdivision taking into consideration elevations, view, building site features, landscaping and other relevant factors and considerations of an aesthetic nature.

4. The owner or owners of a tract may place unlimited recreational facilities thereon as may be feasible and approved by the Architectural Committee.

5. The interpretation of the uses allowed on said tracts shall be within the exclusive authority of the Architectural Committee. No other uses shall be allowed, except as herein provided in paragraphs 1 and 7.

6. No buildings, structures, construction, reconstruction, alterations or improvements on the commercial and multiple dwelling tracts or utility tracts shall exceed 35 feet in height measured from the highest roof ridge to the average level of a finished grade, provided the height for Tracts 2A shall not exceed 60 feet and 2B shall not exceed 40 feet in height. On Tracts 5B, 5C, 5D, 5E, 5F and 5G the Architectural

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Committee may approve plans of buildings in excess of 35 feet in height where topography and conditions are suitable for specific sites. When the plans for 5B, 5C, 5D, 5E, 5F, and 5G indicate that the finished grade deviates from an original grade, the Architectural Committee may, in its discretion, deny a building permit if the height of the building is more than 35 feet above the original grade. The Committee may further deny a building permit for a structure or building in excess of the permitted height restrictions if it unreasonably interferes with the view, building sites, elevations and general aesthetic considerations and factors of nearby tracts and lots and the subdivision as a whole.

7. Commercial Uses and Other Uses for Tracts

- a. Tracts 6 and 5G may be used for light commercial purposes, retail, banking and real estate facilities, gas stations and convenience stores. No auto repair shops or auto sales lots are allowed.
- b. Tract 2B may be used for a parking facility.
- c. Tract 5C may be used as open space, utility facilities, including a propane storage facility.
- d. Tract 5H may be used for general utility and telephone service utilities.
- e. Tracts 7A and 7B may be used for community service facilities, including, but not limited to, a fire station.
- f. Tracts 2B and 5B may be further subdivided by Boyne USA, Inc., into smaller sites for the location of one or more multiple dwelling structures or complexes for the uses herein provided for, with the review and approval of the Planning Board of Madison County and by the Madison County Commissioners.
- g. Plans for any improvements on any commercial or multiple dwelling tracts, lots or areas shall provide for off-street parking which shall include at least one and one-half parking spaces for every dwelling unit and sufficient parking for commercial use.
- i. Except as herein provided in these Covenants, no further subdivision of a tract is allowed.

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#### E. OPEN SPACE

The open spaces shown and lettered on Exhibit A shall be used for parks, green belt areas, 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: parking, playgrounds, parks, tennis courts, tennis buildings, health clubs, golf, swimming pools, swimming pool buildings, skiing, trails, ski lift facilities, playing fields, basketball courts, bridle paths storage buildings, comfort stations and shelters, together with such easements as Boyne USA, Inc., or its successors and assigns, may hereafter designate, but in no event shall such construction, improvements, or easements be inconsistent with these Covenants or detract from the use and development of the remainder of the subdivision and may not be used for residential, multiple dwelling or other commercial use, except for easements for utility service lines on, under and across said tracts.

#### F. GENERAL COMMUNITY SERVICE AND LOTS AND TRACTS

##### 1. Community Service Tracts

The following tracts may be used for the purposes set forth next to each tract:

- a. Tracts 7A and 7B - community service facilities
- b. Tract 8 - utility service facilities
- c. Tracts 116A and 275B are designated for use for a water supply facility and or distribution system.

##### 2. Electrical Service Tracts

Tracts 320 and 321 are designated for use as electrical services facilities. This 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, poles, towers, 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 lots as a site for a power substation.

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### 3. Maintenance Facility Tracts

Tract 4 shall be set aside for use as a maintenance shop facility. This use shall include the construction, reconstruction, maintenance, repair, alteration or remodeling of a maintenance shop and associated buildings. This maintenance shop facility shall be used for resort and ski hill maintenance purposes, including but not limited to equipment and vehicle repair, equipment storage, vehicle parking and storage, supply storage, parts storage, fuel storage, and any and all other necessary and appurtenant uses and activities associated with a resort and ski hill maintenance shop facilities.

### III.

#### EASEMENTS

A. Easements for roads, drainage, electricity, telephone, lighting, water, sewer, cable television and all other utilities, skiing, bicycle paths, bridle paths, pedestrian traffic, or any other service or utility shall be and are hereby established and reserved for such purposes as shown on the plat. In addition, a 15 foot easement is reserved for all of the above mentioned utility and service purposes, along the front, rear and sides of all lot and tract lines except for tracts requiring only a 10 foot setback under paragraph II.D.3., in which case the easement shall be 10 foot wide. Provided easements shall not unreasonably interfere with and shall be subject and servient to any and all buildings and improvements existing or to be erected on the lots or tracts.

B. All utility lines, pipelines and service lines shall be installed underground, except for temporary construction power lines.

C. All road easements as shown on the plat include a corresponding easement for drainage, electricity, telephone, lighting, water, sewer, cable television and all other utilities and service lines, skiing, bicycle and bridle paths and pedestrian traffic.

D. Easement areas may be landscaped by property owners so as to enhance their appearance so long as the landscaping does not interfere with the use of the property as an easement. If landscaping within an easement is disturbed, the person or entity responsible for such disturbance shall restore the landscaping to its former condition.

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E. There shall be no blockage or obstruction of any kind placed within public right of ways which pass through the development. No utility service line or facility shall be installed or replaced without the prior approval of the Architectural Committee. All easement areas must be restored, at the expense of the utility or service entity doing such work, to as near the condition that existed previous to such work as possible. In the discretion of the Architectural Committee, a bond may be required of the utility or service entity to insure compliance with this provision.

F. All private roadways, pathways and trails for the common use of the owners shall be maintained, including road grading and snow plowing, by the COA. Madison County will not provide such maintenance.

#### IV.

#### ARCHITECTURAL COMMITTEE

There is hereby created an Architectural Committee ("Committee") to review all plans and specifications for structures, buildings and improvements in accordance with the following provisions and these Covenants.

A. The Big Sky Architectural Committee (BSAC), and its successors and assigns, is designated the Architectural Committee (Committee) to review all plans for improvements to be constructed on a lot, tract or area and to enforce these Covenants in respect to the compliance as to the uses and covenants relating to design, use, and construction of improvements on the lots, tracts and areas. In the event the BSAC ceases to act as the Architectural Committee, the COA Board shall appoint an Architectural Committee to act.

B. The procedures, rules, and Design Regulations and all amendments thereto of the BSAC shall be applicable to all applications for a permit to install or construct improvements on any lot, tract or area within Cascade Subdivision. If the BSAC ceases to act as the Architectural Committee, the Architectural Committee appointed by the COA shall follow the procedures, rules and Design Regulations and amendments thereto adopted by the COA.

#### C. MEMBERSHIP OF ARCHITECTURAL COMMITTEE AND PROCEDURES

1. The membership and procedures of the Architectural Committee shall be as established by these Covenants, the BSOA Bylaws and the procedures, rules, and regulations of the BSOA/BSAC. If the BSOA fails to appoint the BSAC to act or the BSAC ceases to act as the Architectural Committee for Cascade Subdivision as

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provided for under these Covenants, then the COA shall appoint an Architectural Committee to act pursuant to these Covenants and the COA shall adopt substantially the same appointment procedures for the members of the Architectural Committee and the substantially the same procedures, rules, and regulations and amendments thereto which were used by the BSOA and the BSAC at the time the BSAC ceased to act as the Architectural Committee for Cascade Subdivision.

## 2. Rules

The Architectural Committee shall adopt such Design Regulations and may make such reasonable rules and adopt such procedures as it deems necessary to carry out its functions, which rules and procedures shall be consistent with the provisions of these Covenants and the BSOA Bylaws if applicable.

### D. SUBMISSION AND APPROVAL OF BUILDING PLANS REQUIRED

No building, structure, construction, reconstruction, alteration, remodeling, painting, landscaping, parking, fence, wall or other improvement shall be placed, constructed, erected, repaired, restored, reconstructed altered, remodeled, added to or maintained on any lot, tract or area until drawings, plans and specifications (which must have been prepared by a licensed architect for all construction, reconstruction, alteration or remodeling), and such other information as the Committee may reasonably require, including without being limited to color, building materials and models have been submitted to, and approved by, a majority of the Committee in writing; nor may the same be commenced until the Committee shall have issued a Permit allowing for such improvements. This section is not to be construed so as to require Committee permission to do interior painting, wall-papering, and other similar non-structural, interior decorating. Notwithstanding anything herein to the contrary, underground improvements, ground level improvements, utility facilities, parks, ski lift facilities and trails shall not require committee review.

### E. SPECIFIED POWERS

#### 1. Setbacks

If there is no specified setback for a lot, tract or area in these Covenants, the Committee shall designate setback requirements for any improvements as in its discretion best suits the requirements of the site.

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## 2. Compatibility and Conditional Approval

The Committee shall have the authority to reject the materials, designs and colors submitted with plans or the plans themselves if these are not compatible with or are inappropriate with the other improvements in the subdivision and the master plan for the Mountain Village or the Design Regulations. The Committee may conditionally approve plans specifically stating the conditions which must be met for approval and issuance of a permit.

## 3. Variances

The Committee shall have the authority to grant variances to any section of these Covenants over which it has authority or the adopted Design Regulations relating to matters over which it has the authority to regulate, approve or disapprove where in its discretion it believes the same to be appropriate and necessary and where the same will not be injurious to the rest of the subdivision and will not substantially affect the view, use, landscaping, elevations and general aesthetic consideration and factors of near by lots. The Committee shall weigh all the relevant factors in granting or denying a variance, including hardship and the factors set forth in this Section IV.

## 4. Completion Pursuant to Plans and Specifications

All improvements, construction, reconstruction, alterations, remodeling or any activity requiring the approval of the Committee must be completed in substantial compliance with the plans and specifications and conditions initially approved by the Committee and for which a Permit has been issued.

## 5. Enforcement

The Committee shall have the power, authority, standing and right to enforce these Covenants in any court of law or equity when it reasonably believes the same have been violated and as more particularly set forth in paragraph XVII and shall have the authority to revoke or suspend Permits, and/or order the suspension or cessation of any construction or work in violation of these Covenants or of any Permit issued by the Committee.

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## 6. Fees

The Committee shall require reasonable fees to be paid with the filing of plans and specifications and the issuance of Permits to defray the expenses and the expenses of administration, review of plans, inspection and enforcement of the provisions of these Covenants.

## 7. Landscape Plans

Simultaneously with the filing of any initial building plans for any lot, tract or area the owner thereof must also submit to the Committee a landscape plan. This landscape plan must set forth in detail the landscaping to be installed, placed or planned on such lot, tract or area including paths, walks, shrubs, trees, rocks, fences, walls or any feature to be incorporated into a landscape design or plan and such landscape plan must be approved before any Permit is issued. The landscaping provided for in the landscape plan must be completed within one year of the completion of the construction authorized by the Permit.

## 8. Guidelines

The Committee shall be governed by the following guidelines in its consideration of plans and specifications submitted for its approval:

- a. It must recognize that this subdivision is a part of an Overall Development Plan for all the property to be developed by Boyne USA, Inc. in the Mountain Village, Big Sky, Montana, and all improvements in the subdivision must harmoniously combine, and be consistent, with the development of the entire project and the Overall Development Plan, so as to maintain a uniformity of value and quality.
- b. In considering any plans and specifications, the Committee shall examine the suitability of the same to the site, including the materials of which it is to be constructed, as well as the relationship of the same to the neighborhood and the adjacent properties.
- c. No plans or specifications shall be approved which will be so similar or dissimilar to other improvements or structures that monetary or aesthetic values will be impaired.

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d. All plans and specifications shall be in full compliance with all of the terms and provisions of these Covenants, and adopted Design Regulations, except for any variances, which may have been granted by the Committee for such plans and specifications.

9. The Committee or the individual members thereof may not be held liable by any person for any damages which may result from Committee action taken pursuant to these Covenants, including but not by way of limitation, damages which may result from correction, amendment, change or rejection of plans, the issuance, suspension or enforcement of Permits or any delays associated with such action on the part of the Committee, or any failure of the owner, contractor or building to comply with standard building codes or practices.

V.

BIG SKY OWNERS' ASSOCIATION (BSOA)

The Big Sky Owners' Association (BSOA) has been founded for the purpose of promoting, developing and operating the subdivisions and the area incorporating lands within the Big Sky area which lands are particularly described in the Bylaws of the Big Sky Owners' Association, Inc., or which are incorporated into the BSOA by amendment to the Bylaws or by submission to its jurisdiction with the approval of the BSOA. The Bylaws include the lands within Cascade Subdivision. The membership rights, obligations and duties and the authority of the BSOA are set forth in said Bylaws, including some or all of the recreational facilities, as may be more specifically designated by BSOA. All owners and commercial lessees of real property in Cascade Subdivision shall be members of the BSOA and shall be subject to and bound by the provisions of the Articles of Incorporation and Bylaws of such Association, which are made a part hereof by this reference. The BSOA shall have the authority to make such charges and assessments to the members as are reasonably necessary to carry out its functions and duties. The BSOA shall have the power to levy assessments, which assessments shall be in two classes:

(1) Capital assessments

(2) Operating assessments

Such assessments may be levied by the BSOA Board in accordance with the Bylaws of the BSOA against any parcel of real property in the said Mountain Village, Cascade Subdivision. The BSOA is granted primary authority to administer and enforce these Covenants

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pursuant to the Bylaws of the BSOA. The BSOA may delegate any part of its authority to the COA.

## VI.

### CASCADE OWNERS' ASSOCIATION

#### A. ESTABLISHMENT OF COA

An Association is hereby established known as "Cascade Owners' Association", referred to in this document as the "COA". The COA shall be incorporated as a nonprofit corporation under the Montana Nonprofit Corporation Act, the COA shall adopt Bylaws consistent with Montana Law and these Covenants, and all owners of lots, tracts or areas within Cascade Subdivision shall be members of the COA.

#### B. MEMBERSHIP IN ASSOCIATION

Every owner or contract purchaser of a lot, tract or area, including an owner of a condominium unit or other unit shall be a member of the Cascade Owners' Association (COA). Membership shall be appurtenant to and may not be separate from the ownership of any lot, tract or area or ownership interest in a building or condominium unit. Each member shall be responsible for advising the COA of his or her acquisition of ownership, of his or her mailing address and of any changes of ownership or mailing address.

#### C. COA BOARD OF DIRECTORS

Subject to the authority granted to the BSOA and BSAC in these Covenants and the BSOA Bylaws, the COA Board shall have the authority and responsibility for management and maintenance of the COA and its property and the administration of the COA and these Covenants.

Subject to the authority of the BSOA and the BSAC, the COA, acting through its Board of Directors, shall have the power and authority to adopt Bylaws, enter into agreements and contracts, borrow money, acquire insurance, engage contractors, hire managers or other employees, pay COA obligations, and take such actions as shall be necessary or reasonable to administer these Covenants, care for, protect and maintain the common facilities including roadways, open spaces easements, water rights allocations, trails, weed control on the common areas, common parking lots, drainage easements; to administer and enforce these Covenants; to set and collect assessments to carry out the purposes of these Covenants; to set annual and/or special meetings; and to act in any other matters set

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forth herein or which may serve the project, including the consent to the formation of improvement districts, either public or private, for such other improvements and ventures as the COA shall approve.

In the event the COA and the BSOA or the BSAC have the same authority and responsibility, then the BSOA Board or the BSAC shall have the prevailing authority and responsibility, provided however, if the BSOA Board or the BSAC does not act, then the COA shall act to exercise the authority granted.

The COA Board shall act by majority vote. The officers of the COA shall follow the directions of the majority vote of the COA Board. Bylaws adopted by the COA Board may more particularly define and prescribe the procedures for meetings and notices of meetings, voting, duties of directors and officers and other procedural matters.

#### D. ANNUAL MEETINGS - ELECTION OF DIRECTORS AND OFFICERS

The COA shall hold an annual meeting each year at such date, place and time as shall be set by the COA Board. At the annual meeting, the COA members shall review and approve a budget for the next year, shall set the number of Directors, nominate and elect Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association. Boyne USA, Inc., its successors and assigns shall have the right to appoint the majority of the COA Board until it has divested itself of title to 90% of the lots and tracts.

The annual meeting of the COA Board shall be held immediately after the annual meeting of the members. At the annual meeting, the Directors shall elect a Chairperson, Vice-Chairman and Secretary-Treasurer for the COA from among the Directors, except that the Secretary-Treasurer may be a member or agent of a member who is not a Director. The COA Board may appoint a director to fill any vacant director position until the next membership meeting.

#### E. SPECIAL MEETINGS

Special meetings of the COA shall be called, noticed and held upon the request of the chairperson or by a majority of the COA Board, or by upon written request of 25% of the votes of the members.

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F. MEMBERSHIP DETERMINATION

For the purpose of determining ownership and therefore membership in the COA, at any meeting, an owner shall be deemed to be a member upon the recording of a duly executed deed transferring fee simple title to an owner or upon the recording of a Notice of Purchaser's Interest or an Abstract of Contract showing a contract purchase by an owner of ownership interest in the property. The legal title retained by the Seller selling under a contract for deed shall not qualify such Seller for membership. A mortgagee or person or entity holding a security interest in a lot or tract shall not be deemed an owner. Notwithstanding anything herein to the contrary, the Owners' Association of a condominium building or multi-owner building or facility located on a lot, tract or area shall be deemed one member representing all of the unit owners for the purpose of voting, assessments, notification and other COA matters. The condominium or multi-owner building owners' association shall have a number of votes in the COA matters equal to the total number of unit owners. All other members shall have one vote per lot, tract or area.

G. NOTICE OF QUORUM OF ANY ACTION AUTHORIZED UNDER COVENANTS

Written notice of the annual meeting and any COA membership meeting called for the purpose of taking any action authorized under these Covenants shall be mailed or personally delivered to all members at their last known mailing address not less than fifteen days nor more than sixty days in advance of the meeting. Twenty percent (20%) of the members present or represented by written proxy, shall constitute a quorum to conduct business. Written ballots received by COA on an action or matter shall be counted towards a quorum for such action or matter voted upon.

At an annual or special meeting of COA duly noticed and called, the members present in person or by proxy entitled to cast votes and the written ballots returned to the Association, if any, shall be counted towards a quorum for purpose of any matters voted upon by such members present, by proxy, or by written ballot. If the required quorum is not present, another meeting may be called subject to the same notice requirement; and the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding noticed meeting. Any matter to be voted upon shall be contained in the notice of the meeting mailed to the members. A condominium or multi owner building owners' association shall represent and vote for all of the owners of units in the building or facility as the member.

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Notice of a Board of Directors' meeting shall either be by written notice or by oral notice to each Director, delivered or communicated at least two days before a meeting, unless waived in writing by a Director. The COA Board shall hold such meetings as shall be called by the Chairman or two Directors. A majority of the total number of Directors shall be required to take any action at a Directors' meeting.

#### H. WRITTEN BALLOT

Any matter or action that may be taken at any annual or special meeting of members of the COA for any other matter or action that may be taken by the owners/members of the COA may be taken with or without a meeting if the action or matter is approved by the required vote or percentage interest of the members/owners by written ballot as provided herein. Written ballots may also be used for the election of directors and other actions and such written ballots shall be counted towards a quorum for such matter(s) or action(s) voted upon at such meeting. The COA Board shall deliver personally or by mail a written ballot to each member entitled to vote on the matter or action to be voted upon or authorized. The written ballot shall set forth each proposed matter or action and provide an opportunity to vote for or against each proposed action and for nominees for the Board. Approval by written ballot of any matter or action without a meeting shall be valid when the number of votes cast by written ballot equals or exceeds the quorum required to be present at a meeting held to authorize such matter or action or the number of approvals equals or exceeds the number of membership votes or percentage interests that would be required to approve the matter at a meeting. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter or action, and specify the time by which a written ballot must be received by the COA in order to be counted. A timely written mail ballot received by the COA may be revoked by a member in writing if the revocation is received by the COA before the response deadline. The results of each matter or action by written ballot shall be certified by the secretary and shall be included in the minutes of the meetings of members filed in the permanent records of the COA.

#### I. MEMBERSHIP APPROVAL

Unless a greater or less number is otherwise stated, any matter or action or issue requiring a vote of the COA membership shall be approved upon the affirmative vote, in person, written proxy or written ballot, or any combination of the foregoing, of more than fifty percent (50%) of all votes cast by the membership on the issue.

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J. ANNUAL AND SPECIAL ASSESSMENTS, CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS

For each lot, tract, area, building or facility owned within the properties, the Developer hereby covenants; and the owners and members of any building or facility, whether or not it shall be so expressed in any deed or contract, is deemed to have agreed to these Covenants and have agreed to pay to the COA (Association):

- (1) Annual assessments or charges; and,
- (2) Special assessments for capital improvements and activities.

Such assessments shall be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, including collection costs and fees, shall be a charge on each building, facility, tract, lot and area shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with the interest and costs shall be the personal obligation of the member(s) and owner(s) of such property at the time when the assessment fell due.

Annual and special assessments shall not be charged to a utility company providing services to the members.

K. PURPOSE OF ANNUAL ASSESSMENTS

The annual assessments levied by the COA shall be for the purpose and used to promote the recreation, health, safety, convenience and welfare of the owners and for the administration and enforcement of these Covenants, improvement, repair and maintenance of the common facilities, including but not limited to, common roads, trails and walkways, common easements, common parking lots, open spaces, water right allocations, drainage easements, and for common expenses and fees, including professional fees and costs for administering and enforcing these Covenants and the Bylaws and for any other purposes, expressed or implied, in these Covenants. The COA through the COA Board shall have the authority to assess for such expenses, costs and fees and repairing and maintaining the common facilities and administering and enforcing these Covenants.

L. AMOUNT AND APPROVAL OF ANNUAL ASSESSMENTS

The annual assessments per, lot, tract, area, building or facility which may be made by the COA in every calendar year shall not

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substantially exceed the projected and budgeted actual and reasonable expenses and costs to be incurred by the COA during the coming year in carrying out the purposes herein set forth and shall include a reasonable reserve for maintenance, enforcement and contingencies. The amount of the annual assessments shall be fixed by the COA Board in the following manner:

At each annual meeting of the members of the COA, the COA Board shall present a proposed budget of the estimated expenses and costs and a reasonable reserve for the Association for the coming year to the members for review, discussion, amendment and approval. The members shall approve or amend the proposed budget by a majority vote of the members voting in person, by proxy or by written ballot. The members shall continue to vote until a budget is approved by a majority of the votes of those members voting. After the annual meeting, the COA Board shall set the amount of the assessments for each member and shall set the date(s) due for the coming year based upon the budget approved in the manner herein set forth.

If the annual assessments are insufficient to pay the actual costs and expenses of the association and the reserve, the COA Board may call a special meeting to present a revised budget for approval and once the revised budget is approved, then the Directors may recalculate the annual assessments.

#### M. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS

In addition to the annual assessments authorized above, the COA may levy special assessments for the purpose of defraying, in whole or in part, the cost of any initial construction, or replacement of common elements and capital improvements on the common facilities and open areas, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of sixty-six and two-thirds percent (66 2/3%) or more of all of the votes of the members voting in person, by proxy or by written ballot. Special assessments may be levied to be paid over one or more years. Special Assessments for normal and regular maintenance, and repairs of any common facilities or areas constructed pursuant to this paragraph shall require the approval of a majority of the COA Board instead of the sixty-six and two-thirds percent (66 2/3%) vote referred to above.

#### N. UNIFORM RATE OF ASSESSMENT

Except as set forth herein, annual assessments shall be fixed by the COA Board at a uniform rate for each building, unit, facility, tract, lot or area except the Directors may fix a different uniform

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rate for improved and unimproved tracts, lots or areas. The assessments may be collected on a monthly, quarterly or annual basis or any other regular basis as may be determined by the COA Board. Except as set forth herein, special assessments shall be fixed at a uniform rate for each building, unit, facility, tract, lot or area. Different rates of annual or special assessments may be set by the COA Board for different phases of the subdivision and the respective use or nonuse of the common elements or areas by the members. Notwithstanding anything herein to the contrary, the tracts, lots, or areas, including open spaces, used for public or private utility facilities, community service facilities, transportation facilities, ski lift facilities, and improvements or structures benefiting the subdivision, its members, or the general public shall not be subject to annual or special assessments, including but not limited to fire stations, water and sewer facilities, maintenance shop facilities, power and telephone facilities, parking lots, trails, parks and undeveloped open spaces, golf courses, and the like. Furthermore, public or private utility companies or companies providing common services to the subdivision and members, such as fire stations, water companies and the like, who own a tract may be exempted by the COA Board from assessments.

O. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS - DUE DATES

Except as herein provided, the annual and special assessments provided for herein shall be due as to the buildings, units, facilities, tracts, lots or areas on the date determined by the COA Board (which may be monthly, quarterly, semi-annually or annually). The COA Board shall fix and mail notice of the amount of the annual assessments against each building, unit, facility, tract, lot or area at least thirty days in advance of the due date of each annual assessment and at least ninety days in advance of a special assessment. Written notice of the annual and special assessments shall be mailed or personally delivered to every member subject thereto, at their last known mailing address.

P. EFFECT OF NONPAYMENT OF ASSESSMENTS - REMEDIES OF THE ASSOCIATION

Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The COA may bring legal action for collection against the members or owners who are in default upon their obligation to pay the same or may foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common elements or areas or by abandonment of his or her lot, facility or building.

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Upon delivery of the notice of assessment to the owner or member, the assessment shall be a lien upon the owner's interest in the building, unit, facility, tract, lot or area until paid. In the event the owner or member fails to timely pay an assessment, the COA may file or record a Notice of Lien with the Clerk and Recorder of Madison County, Montana. From the date of filing or recording of the Notice of Lien, the assessment shall be a lien upon such owner's building, unit, facility, lot, tract or area upon which the assessment was assessed. The Notice of Lien shall also be mailed to the owner at the owner's address on file with the COA. In the event of non-payment by an owner or member within thirty days after the recording of the notice of lien, the COA may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property.

Q. SALE OR TRANSFER OF A LOT, TRACT, BUILDING, UNIT OR INTEREST IN A BUILDING

The sale, transfer or encumbrance of any tract, lot, building, area, unit or interest in a building shall not affect the assessment lien if filed or recorded in the records of Madison County, Montana, or the personal liability of the owner responsible for the assessment. No sale or transfer to a third party with actual or constructive knowledge of an assessment shall relieve such new owner from the liability for any outstanding assessments, or from any assessments thereafter becoming due, or from the filed or recorded lien thereof. A person or entity purchasing a tract, lot, area, building, unit, or interest in a building shall be responsible for checking with the COA for any outstanding assessments against said tract, lot, area, building, unit or interest in a building before the closing upon the purchase.

VII.

WATER AND SEWAGE

Within this subdivision, all improvements or structures designated for occupancy or use by humans shall be connected to public water and sewer facilities constructed or installed by Developer in the Subdivision. The sewer disposal system is provided by the Big Sky County Water and Sewer District No. 363, its successors or assigns. A permit from the Big Sky County Water and Sewer District No. 363, its successors or assigns, is required before connection to the sewer facilities. A permit may be required for hookup to the public water system. Mechanical garbage disposal facilities or the equivalent shall be provided in each kitchen or food preparation area.

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## VIII.

TRASH AND GARBAGE

No trash, waste, garbage, litter, junk or refuse shall be thrown, dumped or left on any portion of the Premises and no burning of the same shall be permitted, except in accordance with, and with permission of, the Fire District. No incinerator or other device for burning of trash or garbage shall be installed or used. Each owner or lessee shall provide suitable receptacles for the containment and collection of trash and garbage, which must be enclosed or screened or otherwise unexposed to public view. Nothing contained herein shall be construed to prohibit or deny the installation or use of wood burning fireplaces in accordance with the Design Regulations.

## IX.

SIGNS

Each structure, building or unit shall install an address sign visible for all services including mail services to assist in readily locating the property. All signs, billboards, posters, displays, advertisements or any structures relating thereto are prohibited unless they shall have received the approval of the Committee prior to installation or use; which restriction shall also include signs for identification of streets, residences, places of business and directional or location markers or signs. Real estate signs offering property for sale, as described in the Design Regulations, are allowed.

Appropriate traffic control, pedestrian crossing, and street name signs shall be installed within the development by the Developer at appropriate locations prior to each final plat approval or at such time as required by an improvements agreement between Madison County and Developer. Maintenance of these signs shall be the responsibility of the Homeowners' Association, not Madison County.

## X.

ANIMALS

Animals such as dogs, cats, birds or horses are allowed in the Subdivision as pets so long as they do not constitute a nuisance to others. Dogs and cats must at all times be contained on the owners' property. Kennels, stables or other facilities for the keeping or retention of animals shall be restricted to areas so designated by the Committee. The commercial breeding, care,

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raising or keeping of any animal is forbidden. The Committee may further require that when animals are taken from and owner's property, such animals must then be kept on a leash or bridle or must be under the owner's control at all times. If an animal cannot be controlled or contained by its owners after the said owner has been notified of complaints, the Committee, in cooperation with the proper enforcement agencies, may order the animal removed.

## XI.

### ENVIRONMENT

Every attempt shall be made to preserve and protect the environment indigenous to the area. Disturbance, destruction or damage to plant life, animal life (or 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 on the land or for the proper and orderly development of the Premises. The discharge of firearms and hunting of any kind are strictly forbidden. No existing tree may be cut, removed or voluntarily destroyed by any party, including property owners, without obtaining the prior written approval of the Committee. 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. Every building plan must include a landscape plan for approval by the Committee and must provide for the planting of grasses, trees, shrubs and other landscape features which must serve to enhance the appearance of the site.

## XII.

### MINING

No mining, quarry, excavation or oil drilling of any kind shall be allowed in or on the Premises 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 Covenants.

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## XIII.

TEMPORARY STRUCTURES

No trailer, mobile home, basement, tent, shack, garage, camper or similar temporary structures shall be used at any time, within the subdivision, as a residence or a place for habitation or sleeping, temporarily or permanently, except where the same may reasonably be necessary during construction and never without: (a) the prior approval of the Committee, which is revocable at any time in its discretion, and (b) never for more than seven months at a time. No trailer, boat, mobile home, snowmobile, camper or any structure of a temporary nature shall be permitted to be kept or stored on the premises except under the terms of subparagraph 11(a) above and unless a covered, fenced and screened parking space is provided, which must be approved by the Committee.

## XIV.

NUISANCE

No noxious or offensive use or activity shall be carried on within the subdivision which shall constitute a public nuisance. No snowmobiles, "ATV-like" vehicles, or helicopters shall be allowed within the subject Subdivision for recreational purposes. Such vehicles may be used and operated only for emergencies, maintenance or safety purposes.

No exterior visible television or radio antennas are permitted in the Subdivision and no exterior visible television dishes, including those dishes used for satellite television, are permitted in the Subdivision.

## XV.

CONSTRUCTION

All construction on or in the Premises shall be diligently prosecuted to completion and shall in any event be completed within 12 months of commencement unless specific written extension is granted by the Committee. No construction materials shall at any time be placed or stored so as to impede, obstruct or interfere with pedestrian or vehicular traffic and no construction materials shall be placed or stored on residential lots or condominium tracts for a period exceeding 30 days following substantial completion of construction as shall be determined by the Committee.

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## XVI.

MAINTENANCE OF PROPERTY

Each lot, unit, tract, area or other parcel, whether improved or unimproved, occupied or unoccupied, shall be maintained in a good and clean condition and in such a manner as to prevent the property from becoming unsightly, unsanitary or a health hazard.

## XVII.

ENFORCEMENT

A. In the event of any violation or threatened violation of these Covenants, any owner of real property in the Subdivision, the BSOA, COA or the Committee, upon giving proper notice and the opportunity for the violator to remedy or abate the violation, may enforce these Covenants by legal proceedings in a court of law or equity, including the seeking of injunctive relief and damages.

B. Notice as required in paragraph XVII-A above, shall be in writing and shall be served on the person or entity concerned and shall specify the violation or threatened violation, identify the property, demand compliance with the terms and conditions of these Covenants and shall state the action which will be taken under paragraph XVII-A above if the violation or threatened violation is not abated, remedied or satisfied. Service shall be made by mailing a copy of the notice by Certified Mail, return receipt requested, to the last known address and/or address of record of the violator. Such notice must provide for a period of fifteen (15) days from the date of personal service or thirty (30) days from the date of posting and mailing of the same, within which compliance can be had with these Covenants before any abatement or commencement of litigation as provided herein above can be commenced.

C. Such notice must also set forth a time, date and place for a hearing where the owner shall have an opportunity to appear to deny the statements set forth in such notice and to show cause why he/she is not in violation of these Covenants. Such hearing shall be set at least thirty (30) days subsequent to the date of service or notice to the property owner charged with such violation. Such hearing shall be conducted by the Committee according to procedures it has developed, which may include Mediation or an independent Hearing Officer.

D. Actual costs, expenses and reasonable attorneys' fees connected with correcting, remedying, abating, preventing or

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removing any violation or threatened violation of these Covenants incurred either through litigation, or following a hearing as provided in sub-paragraph XVII-C above, shall constitute a claim by the owner, BSOA, COA or the Committee initiating such action against the owner of the property which is the subject of such violation or threatened violation. In the event of court action, the prevailing party shall be entitled to its costs including reasonable attorney' fees. The owner, BSOA, COA or the Committee making such claim may file a lien against the subject property in the amount of and for the collection of the claim by filing a verified statement of the lien with the office of the Clerk and Recorder, Madison County, Montana. Such lien statement must set forth the name(s) of the claimant(s), and the owner of record of the property against which the lien is claimed, a description of the property, the amount of the claim, the date of the claim and a brief statement of the manner in which the costs and expenses constituting the claim were incurred. Once filed, the lien shall remain of record as a claim against the property until paid in full or foreclosed in the manner otherwise provided by law, subject to rights of redemption.

#### XVIII.

#### AMENDMENT

These Covenants, or any portion thereof, may be amended, abandoned, terminated, modified or supplemented at any time by the approval of such amendment by the vote at a meeting duly noticed and called for this purpose or by the written consent of the owners of seventy-five percent (75%) of the total area of privately owned land within Cascade Subdivision, including open space, provided the governing body of Madison County gives its approval to any changes to Covenants required by Madison County in the condition for final plat approval. A written ballot may be delivered to the owners personally or by mail for the purpose of voting upon or consenting to any such amendment. Any amendment shall be effective upon the recording of a certificate of amendment executed by the presiding

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officer and the secretary of the COA certifying that the Covenants have been amended in accordance with the Covenants and setting forth the amendment.

XIX.

**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.

DATED this 20th day of November, 1997.

BOYNE USA, INC.

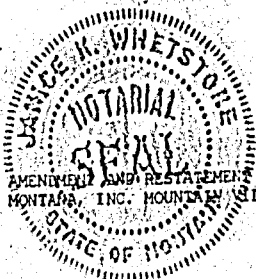
BY: John E. Kircher, VP by  
Stephen M. Barrett  
 Its attly in fact

STATE OF MONTANA     )  
                                       : SS  
 County of Cascade     )

On this 20th day of November, 1997, before me, a Notary Public in and for the State of Montana, personally appeared Stephen M. Barrett, known to me to be the Attorney in Fact for John E. Kircher, Vice President of Boyne USA, Inc., on behalf of the said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Janice K. Whetstone  
 Notary Public for the State of Montana  
 Residing at Bremor  
 My Commission Expires 9/17/98



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BOOK 443 PAGE 643

LIFT ACCESS COVENANT

THIS COVENANT is made this 14<sup>th</sup> day of August, 2000, by BOYNE USA, INC., a Michigan corporation, with one of its principal offices at P. O. Box 160001, Big Sky, Montana, hereinafter for convenience referred to as "Boyne".

WHEREAS, Boyne is either the owner of the following lots located in phases 1, 2, 3 and 4 of Cascade Subdivision, a tract of land located in Sections 19 and 30, Township 6 South, Range 3 East, Madison County, Montana, or the owners of the listed tracts have contractually agreed to have this Covenant apply to their Lots. The lots subject to this Covenant being more particularly described as:

See Exhibit "A" attached hereto and incorporated herein by this reference.

WHEREAS, the real property described on Exhibit "A" is a portion of the area more commonly known as the "Cascade Subdivision" and shall be referred to herein as the "Property". The lifts which provide access from the Property to the Big Sky Ski and Summer Resort (the Resort) are known as the Cascade Lift and the White Otter Lift (collectively referred to as the Lifts).

WHEREAS, Boyne is desirous of subjecting the Property to this covenant for a lift access fee. The initial lift access fee shall be \$750 for each Lot and \$500 for each Condominium Unit located within the Property having direct access to the Lifts and \$500 for each Lot or Condominium Unit having indirect access to the Lifts. Assessments for the Lift Access Fee shall commence with the 2001-2002 ski season. The designation of which Lots or Units have direct or indirect access is shown on Exhibit A. This covenant is for the benefit of the Property and the owners thereof and shall run with the Property, applying to and binding the present owners and all future owners and their successors-in-interest.

1. Subject to the terms of this covenant, Boyne hereby grants to each owner of the Property a license for the use of the Cascade and White Otter Lifts to access to the network of ski lifts, hills and trails within the Resort. Boyne may establish reasonable rules and regulations relating to the use and enjoyment of said license. This license is merely authorization to gain access and shall not obviate the need for ski tickets or passes. Failure to pay all such assessments shall result in the lot owner and such owners successors and/or assigns being prohibited from using the transportation ski lift facilities in Cascade Subdivision.

2. The annual lift access fee shall be adjusted upward or downward effective October 1<sup>st</sup> of each year (the adjustment date). The first adjustment to be October 1, 2002, as set forth in

COURTESY RECORDING  
NO RECORD SEARCH

this paragraph. The base for computing the adjustment is the index figure for the month of September, 2001 (index date) as shown in the U.S. City Average, All Urban Consumer Price Index published monthly by the United States Department of Labor, Bureau of Labor Statistics. The index for the adjustment date shall be computed as a percentage of the base figure. For example, assuming the base figure for the month of September, 2001, is 170, and the index figure for September, 2002 (adjustment date for the first year) is 175, the percentage to be applied is  $175/170 = 1.03$ . The calculated percentage shall then be applied to the initial annual license fee for the period beginning on the adjustment date. The new rate shall continue until the next adjustment date, except that the annual license fee as adjusted shall never be less than initial license fees set forth above. If the publication of the described index is discontinued, another generally recognized index shall be substituted.

3. Upon formation of the Cascade Owners Association ("COA") the annual assessment for costs associated with the operation, maintenance and grooming of the White Otter Lift and Cascade Lift transportation ski lifts shall be collected by COA and paid to Boyne, subject to the provisions of this Covenant.

4. (a) The annual assessment, together with interest, at the rate of ten percent (10%) per annum, costs and reasonable attorneys fees, shall be a charge on each lot subject to such assessment and shall be a continuing lien upon the lot against which each such annual assessment is made. Each such assessment, together with interest, costs and reasonable attorneys fees, shall also be a personal obligation of the owner of such lot at the time when each such assessment is made.

(b) Any lien statement must set forth the name(s) of the claimant, the owner of record of the lot against which the lien is claimed, a description of the property, the amount of the claim, the date of the claim and a brief statement of the manner in which the costs and expenses constituting the claim were incurred. Such costs and expenses shall include, but not be limited to, recording fees, cost of title search obtained in connection with such lien or the foreclosure thereof and court costs and reasonable attorney's fees which may be incurred in the enforcement of such lien. Once filed, the lien shall remain on record as a claim against the lot until paid in full, or foreclosed in the manner provided by law, subject to the right of redemption.

(c) The foregoing lien and the rights to foreclose thereunder shall be in addition to, and not in substitution for, all other rights and remedies which any party may have hereunder and by law, including any suit to recover a money judgment for unpaid assessments.

5. Boyne reserves the right to allow for use of the White Otter Lift and Cascade Lift transportation ski lifts by third parties, provided that such third parties are assessed a fee, payable solely to Boyne, for use of the lifts and trails.

This Covenant shall be binding upon and inure to the benefit of Boyne, the lot owners and their successors-in-interest and assigns.

IN WITNESS WHEREOF, Boyne has executed this "Lift Access Covenant" this 14<sup>th</sup> day of August, 2000.

Boyne USA, INC., a Michigan corporation

BY: John E. Kircher VP  
Stephen M. Barrett  
 John E. Kircher, Vice President by  
 Stephen M. Barrett, his Attorney-in-Fact

STATE OF MONTANA )  
 )  
 County of Gallatin )

On this 14<sup>th</sup> day of August, 2000, before me, a Notary Public for the State of Montana, personally appeared Stephen M. Barrett, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of John E. Kircher, and acknowledged to me that he subscribed the name of John E. Kircher thereto as principal and his own name as attorney-in-fact.



Jessi Fisher  
 Notary Public for the State of MT  
 Residing at: Bozeman  
 My commission expires: 6-29-04

LEGAL DESCRIPTION	LOT AND BLOCK	DIRECT ACCESS	INDIRECT ACCESS
SUBDIVISION	NUMBER		
CASCADE	TRACT 5B		
CASCADE	B2, 46 A	√	
CASCADE	B2, L 47	√	
CASCADE	B2, L 48 A	√	
CASCADE	B2, L 50 A	√	
CASCADE	B2, L 52 A	√	
CASCADE	B2, L 54 A	√	
CASCADE	B2, L 57 A	√	
CASCADE	B2, L 59 A	√	
CASCADE	B2, L 62 A	√	
CASCADE	B2, L 66 A	√	
CASCADE	B2, L 68	√	
CASCADE	B2, L 69	√	
CASCADE	B2, L 71 A	√	
CASCADE	B2, L 74	√	
CASCADE	B2, L 75	√	
CASCADE	B2, L 76 A	√	
CASCADE	B2, L 80 A	√	
CASCADE	B2, L 83 A	√	
CASCADE	B2, L 86 A	√	
CASCADE	B2, L 88 A	√	
CASCADE	B2, L 91 A	√	
CASCADE	B2, L 93 A	√	
CASCADE	B2, L 96 A	√	
CASCADE	B2, L 105 A	√	
CASCADE	B2, L 108 A	√	
CASCADE	B2, L 109 A	√	
CASCADE	B2, L 111 A		√
CASCADE	B2, L 114 A		√
CASCADE	B2, L 120 A		√
CASCADE	B2, L 122 A		√
CASCADE	B2, L 124 A		√
CASCADE	B2, L 126 A		√
CASCADE	B2, L 128 A		√
CASCADE	B2, LOT A 13		√
CASCADE	B3, 130 A	√	
CASCADE	B3, L 132 A	√	
CASCADE	B3, L 134 A	√	
CASCADE	B3, 136 A	√	
CASCADE	B3, L 138 A	√	
CASCADE	B3, L140 A	√	
CASCADE	B3, L 142	√	
CASCADE	B3, L143 A		√
CASCADE	B3, L 146 A		√
CASCADE	B3, L 149 A		√
CASCADE	B3, L 151 A		√

CASCADE	B3, L 153 A		√
CASCADE	B3, L 157 A		√
CASCADE	B3, L 160 A		√
CASCADE	B3, L 162 A		√
CASCADE	B3, L 164 A		√
CASCADE	B3, L 165 A		√
CASCADE	B3, L 166 A		√
CASCADE	B3, L 167 A		√
CASCADE	B3, L 168 A		√
CASCADE	B3, L 169		√
CASCADE	B3, L 170		√
CASCADE	B3, L 171		√
CASCADE	B3, L 172 A		√
CASCADE	B3, L 173 A		√
CASCADE	B3, L 174		√
CASCADE	B3, L 175		√
CASCADE	B3, L 179 A		√
CASCADE	B3, 182 A		√
CASCADE	B3, L 184A		√
CASCADE	B3, L 186 A		√
CASCADE	B3, L188A		√
CASCADE	B3, L190A		√
CASCADE	B3, L192A		√
CASCADE	B3, L194		√
CASCADE	B3, L195A		√
CASCADE	B3, L197A	√	
CASCADE	B3, L199A	√	
CASCADE	B3, L201A		√
CASCADE	B3, L203		√
CASCADE	B3, L204		√
CASCADE	B3, L205		√
CASCADE	B3, L206A	√	
CASCADE	B3, L208A	√	
CASCADE	B3, L211A	√	
CASCADE	B3, L213A	√	
CASCADE	B3, L214A	√	
CASCADE	B3, L217A	√	
CASCADE	B3, L218A	√	
CASCADE	B3, L221A	√	
CASCADE	B3, L223A	√	
CASCADE	B3, L225A	√	
CASCADE	B3, L227A	√	
CASCADE	B3, L229A	√	
CASCADE	B3, L231	√	
CASCADE	B3, L232A	√	
CASCADE	B3, L234A	√	
CASCADE	B3, L235A	√	
CASCADE	B3, L236 A	√	
CASCADE	B3, L241	√	
CASCADE	B3, L 243	√	
CASCADE	B3, L 244	√	

CASCADE	B3, L 248	✓	
CASCADE	B3, L 251	✓	
CASCADE	B3, L 252	✓	
CASCADE	B3, L 253 A	✓	
CASCADE	B3, L254 A	✓	
CASCADE	B3, L255A	✓	
CASCADE	B3, L 262	✓	
CASCADE	B4, L 12A	✓	
CASCADE	B4, L12B	✓	
CASCADE	B4, L264	✓	
CASCADE	B4, L266	✓	
CASCADE	B4, L268A	✓	
CASCADE	B4, L270A	✓	
CASCADE	B4, L272A	✓	
CASCADE	B4, L273A	✓	
CASCADE	B4, L275A	✓	
CASCADE	B4, L277	✓	
CASCADE	B4, L 278	✓	
CASCADE	B4, L 279	✓	
CASCADE	B4, L 280	✓	
CASCADE	B4, L 281	✓	
CASCADE	B4, L 282	✓	
CASCADE	B4, L 283	✓	
CASCADE	B4, L 284	✓	
CASCADE	B4, L287A	✓	
CASCADE	B4, L289A	✓	
CASCADE	B4, L 293	✓	
CASCADE	B4, L294	✓	
CASCADE	B4, L299	✓	
CASCADE	B4.L301A	✓	
CASCADE	B4.L303	✓	
CASCADE	B5, L1A	✓	
CASCADE	B5, L2A	✓	
CASCADE	B5, L2B	✓	
CASCADE	B5, L3A	✓	
CASCADE	B5, L4A	✓	
CASCADE	B5, L4B	✓	
CASCADE	B5, L5A	✓	
CASCADE	B5, L6A	✓	
CASCADE	B5, L6B	✓	
CASCADE	B5, L7A	✓	
CASCADE	B5, L7B	✓	
CASCADE	B5, L8A	✓	
CASCADE	B5, L9A	✓	
CASCADE	B5, L10A	✓	
CASCADE	B5, L10B	✓	
CASCADE	B5, L10C	✓	
CASCADE	B5, L10D	✓	
CASCADE	B5, L 11A	✓	
CASCADE	B5, L11B	✓	
CASCADE	B5, L11C	✓	

CASCADE	B5, L11D	✓	
CASCADE	B5, L39	✓	
CASCADE	B5, L1	✓	
CASCADE	B5, L2	✓	
CASCADE	B5, L3	✓	
CASCADE	B5, L4	✓	
CASCADE	B5, L5	✓	
CASCADE	B5, L6	✓	
CASCADE	B5, L7	✓	
CASCADE	B5, L8	✓	
CASCADE	B5, L9	✓	
CASCADE	B5, L10	✓	
CASCADE	B5, L11	✓	
CASCADE	B5, L314A	✓	
CASCADE	B5, L314B	✓	
CASCADE	B5, L315A	✓	
CASCADE	B5, L317A	✓	
CASCADE	B5, L322	✓	
CASCADE	B5, L323	✓	

Filed for record on the 15th day of  
**AUGUST** A.D. **2000** at **2:25**  
o'clock **P.**M. and recorded in Volume **443**  
of **RECORDS** on Page **643-649**

Records of Madison County, Montana  
By *Patty Smith*  
County Recorder

Fee \$ **42.00** Return to **MADISON COUNTY TITLE CO.**



**MODIFICATION OF PROTECTIVE COVENANTS OF BIG SKY OF MONTANA, INC.  
MOUNTAIN VILLAGE, CASCADE SUBDIVISION  
MADISON COUNTY, MONTANA, HEREINAFTER TO BE KNOWN AS:**

**PROTECTIVE COVENANTS FOR CASCADE SUBDIVISION**

WHEREAS, Article XVIII, Amendment, of the Protective Covenants for Cascade Subdivision provides as follows:

R-19855ALTC  
These Covenants, or any portion thereof, may be amended, abandoned, terminated, modified or supplemented at any time by the approval of such amendment by the vote at a meeting duly noticed and called for this purpose or by the written consent of the owners of seventy-five percent (75%) of the total area of privately owned land within Cascade Subdivision, including open space, provided the governing body of Madison County gives its approval to any changes to Covenants required by Madison County in the condition for final plat approval. A written ballot may be delivered to the owners personally or by mail for the purpose of voting upon or consenting to any such amendment. Any amendment shall be effective upon the recording of a Certificate of Amendment executed by the presiding officer and the secretary of the Big Sky Owners Association, Inc. certifying that the Covenants had been amended in accordance with the Covenants and setting forth the amendment.

AND, WHEREAS, we, the undersigned, Penni Nance and Bill Olson represent that we are the presiding officer and secretary of the Big Sky Owners Association, Inc. and certify that we have obtained the written consent of the owners of seventy-five percent (75%) of the total area of privately owned land within Cascade Subdivision, including open space, for amendment of the Protective Covenants for Cascade Subdivision.

NOW, THEREFORE, the Cascade Owners Association consents by this instrument to the following amendments:

**Amending Article I(I) and (X), to read as follows:**

I. "Cascade Subdivision": means the lots, tracts, open spaces and other real property shown on revised Exhibit A and as described in Exhibit B attached hereto and as described on the plat(s), amended plats and supplemental plats of Cascade Subdivision.

X. "Open Space": the are shown on revised Exhibit A as open space.

**Amending Article II(A), to read as follows:**

A. RESIDENTIAL LOTS OR TRACTS - SINGLE FAMILY

Block 1:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18,  
19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34,  
35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 & Tract 22

Block 2:

Lots 45A, 46A, 47, 48A, 50A, 52A, 54A, 57A, 59A,  
62A, 66A, 68, 69, 71A, 74, 75, 76A, 80A, 83A, 86A,  
88A, 91A, 93A, 96A, 105A, 108A, 109A, 110A, 111A,  
114A, 120A, 122A, 124A, 126A, 128A

Block 3:

Lots 130A, 132A, 134A, 136A, 138A, 140A, 142,  
143A, 146A, 149A, 151A, 153A, 157A, 160A, 162A,  
164A, 165A, 166A, 167A, 168A, 169, 170, 171, 172A,  
173A, 174, 175, 179A, 182A, 184A, 186A, 188A,  
190A, 192A, 194, 195A, 197A, 199A, 201A, 203A,  
204A, 205A, 206A, 208A, 211A, 213A, 214A, 217A,  
218A, 221A, 223, 225A, 227A, 229A, 231, 232A,  
234A, 235A, 236A, 241, 243, 244, 247, 248, 249,  
253A, 254A, 255A, 261, 262

Lots 238, 239, 240, 242, 245, 246, 250, 251, 252,  
257, 258, 259 and 260

Block 4:

Lots 264, 266, 268A, 270A, 272A, 273A, 275A, 277,  
278, 279, 280, 281, 282, 283, 284, 287A, 289A, 293,  
294, 296, 301A, 303, 306

Lots 263, 265, 267, 285, 286, 291, 292, 299, 300,  
304, 305

Block 6:

Lot 332, 333, 334, 335, 336, 337, 338, 339, 340, 341,  
342, 343, 344, 345, 346, 347, 348, 349, 350, 351,  
352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362  
and 363

shall be used for one single family residence only.

**Amending Article II(B), to read as follows:**

B. RESIDENTIAL LOTS, TRACTS AND AREAS - SINGLE FAMILY OR MULTI-FAMILY CONDOMINIUMS

Block 2:

Area 13

Blocks 3 and 4:

Tracts 12A and 12B

Block 6:

Lot 324, 325, 326, 327, 328, 329, 330, 331,  
Area 12, Tract G

**Amending Article II(C)(1), to read as follows:**

C. SPECIAL PROVISIONS FOR RESIDENTIAL LOTS, TRACTS AND AREAS

1. Tract 12A and 12B may be developed as single family residential or no more than eight (8) multi-family residential attached or detached condominium units on both tracts and shall hereafter be included in Article II(B) of the Protective Covenants.

**Amending Article II (D)(7)(c), (d), (e) and (j), to read as follows:**

7. Commercial Uses and Other Uses for Tracts.
  - c. Tract 5D may be used as open space, utility facilities, including a propane storage facility.
  - d. Tracts 5H, 7B, and 8 may be used as open space.
  - j. Lots 39, 41, 42 and 83A may also be used for purposes of a ski lift terminals.

**Amending Article II(E), to read as follows:**

- E. Open Space. The open spaces shown and lettered on revised Exhibit "A" shall be used for parks, green belt areas, 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:

parking, playgrounds, parks, tennis courts, tennis buildings, health clubs, golf, swimming pools, swimming pool buildings, skiing, trails, ski lift facilities, playing fields, basketball courts, bridle path, storage buildings, comfort stations and shelters, together with such easements as Boyne USA, Inc. or its successors and assigns, may hereafter designate, but in no event shall such construction, improvements, or easements be inconsistent with these Covenants or detract from the use and development of the remainder of the subdivision and may not be used for residential, multiple dwellings or other commercial use, except for easements for utility service lines on, under and across said tracts.

**Amending Article II(F), to read as follows:**

**F. GENERAL COMMUNITY SERVICE AND LOTS AND TRACTS**

**1. Community Service Tracts**

The following tracts may be used for the purposes set forth next to each tract:

- a. Tracts 7A and 7B- community service facilities
- b. Tracts 116A and 275B are designated for use for a water supply facility and/or distribution system.

**Amending Article XIV, to read as follows:**

A. No noxious or offensive use or activity shall be carried on within the subdivision which shall constitute a public nuisance. No snowmobiles, "ATV-like" vehicles, or helicopters shall be allowed within the subject Subdivision for recreational purposes. Such vehicles may be used and operated only for emergencies, maintenance or safety purposes.

B. No exterior visible television or radio antennas are permitted in the Subdivision and no exterior visible television dishes, including those dishes used for satellite television are permitted in the Subdivision.

C. Prohibited Act: the making and creating of an excessive or unusually loud noise at any location within the Subdivision, heard and measured in a manner hereinafter set forth, shall be prohibited, except when made under and in compliance with a permit issued pursuant to subsection 4 of this section.

- 1. Definition: an "excessive" or unusually loud noise shall be defined as follows:

- a. a noise, fifteen (15) minutes or more in duration out of any one (1) hour period, which exceeds the allowable noise limit for the area in which the noise source is located by five (5) decibels.
  - b. a noise, five (5) minutes or more in duration out of any one (1) hour period, which exceeds the allowable noise limit for the area in which the noise source is located by ten (10) decibels.
  - c. a noise, one and one half (1.5) minutes or more in duration out of any one (1) hour period, which exceeds the allowable noise limit for the area in which the noise source is located by fifteen (15) decibels.
2. Sound Measurement Standard: For the purpose of determining and classifying any noise as excessive or unusually loud as declared to be prohibited by this section, the noise shall be measured on a decibel or sound level meter of standard design and quality operated on the A-weighting scale.
  - a. If the noise source is located on private property, the noise shall be measured on the effected property, but in no case closer then fifty feet (50') from the noise source.
  - b. If the noise source is located on public property, the noise shall be measured on the effected property, but in no case closer then fifty-five feet (55') from the noise source.
3. Allowable Limits. The following shall be the allowable noise limits for the time period specified:
 

Maximum Number of Decibels Permitted from 7 a.m. to 11:00 p.m.:

60 decibels

Maximum Number of Decibels Permitted from 11:00 p.m. to 7 a.m.:

45 decibels
4. Permit to Exceed Limits: Applications for a specified permit to exceed noise levels designated in this section may be made to the Big Sky Owner Association ("BSOA") director or duly authorized representative. The BSOA director or duly authorized representative may grant the release as applied for if he/she finds the following:

- a. That additional time is necessary for the applicant to alter or modify such activity or operation to comply with this section;
  - b. The activity, operation, or noise source will be of temporary duration, and cannot be done in a manner that will comply with subsection (a) of this section;
  - c. That no other reasonable alternative is available to the applicant;
  - d. That the permit is necessary for the community's cultural or social benefit. The BSOA director may prescribe any conditions or requirements deemed necessary to minimize adverse affects upon the community or the surrounding neighborhood, including but not limited to, specific times or functions of the noise or location of the noise source. Any permit granted by the BSOA director under this section shall contain all conditions upon which the permit has been granted and shall specify a reasonable time that the permit shall be effective.
5. Exceptions: The maximum possible noise limits for the times and zones specified in subsection 3 of this section shall not apply to sound admitted from the following:
- a. Any authorized emergency vehicle when responding to an emergency call or acting in time of an emergency;
  - b. Activities of a temporary duration permitted by the BSOA, including but not limited to, community concerts, fire works displays;
  - c. Any construction equipment operated upon any residential, commercial, industrial or public premises during the time period between seven o'clock (7:00 a.m.) and seven o'clock (7:00 p.m.);
  - d. Any lawn and yard maintenance equipment including lawn mowers, snow blowers, chainsaws operated during the time period between seven o'clock (7:00 a.m.) and seven o'clock (7:00 p.m.);
  - e. Any snow making or snow grooming equipment, ski lifts, snowmobiles, ski patrol vehicles, and other equipment associated with the normal operations of the ski resort;

- f. Any motor vehicles designed for and operated on the public streets;
  - g. The sounds of any permitted bells or chimes or the amplified reproduction of the sounds of any bells or chimes played between the hours of eight o'clock (8:00 a.m.) to eight o'clock (8:00 p.m.), provided that said sound shall not exceed eighty (80) decibels.
6. Appeal: Appeal of any action of the BSOA director or duly authorized representative pursuant to subsection 4 of this section, denying the issuance of a permit to exceed the noise level or to play amplified sounds, may be filed within thirty (30) days following such action with the BSOA Board of Directors which shall hear said appeal in accordance with its rules of procedure. The BSOA Board of Directors may confirm, reverse or modify the action of the BSOA director or his/her duly authorized representative.

**Amending Article XVIII, to read as follows:**

XVIII.

AMENDMENT

A. These Covenants, or any portion thereof, may be amended, abandoned, terminated, modified or supplemented at any time by the approval of such amendment by the vote at a meeting duly noticed and called for this purpose or by the written consent of the owners of seventy-five percent (75%) of the total area of privately owned land within Cascade Subdivision, including open space, provided the governing body of Madison County gives its approval to any changes to Covenants required by Madison County in the condition for final plat approval.

B. A written ballot may be delivered to the owners personally or by mail for the purpose of voting upon or consenting to any such amendment. The COA or BSOA shall be authorized to send written ballots, via certified mail, return receipt requested, to the last known address of an owner as shown on the records of the BSOA.

C. Any amendment shall be effective upon the recording of a certificate of amendment executed by the presiding officer and the secretary of the COA or BSOA certifying that the Covenants have been amended in accordance with the Covenants and setting forth the amendments.

CERTIFICATE OF AMENDMENT

BOOK 490 PAGE 672

The undersigned herewith certifies that the written amendment to those certain Protective Covenants for Cascade Subdivision, Madison County, Montana, previously recorded in Book 414, page 394, as Document No. 064137 on December 19, 1997, in the records of the Clerk and Recorder's office, Madison County, Montana, has been amended by and through the authority and with the approval of the owners of record of more than seventy-five percent (75%) of the total area of privately owned land within Cascade Subdivision, including open space.

DATED this 18 day of July, 2003.

Big Sky Owners Association, Inc.

By: Penni Nance

Title: Chair

By: [Signature]

Title: Secretary

STATE OF MONTANA

County of Gallatin

On this 18 day of July, 2003, before me, a notary public in and for said State, personally appeared PENNI NANCE, known to me to be the Chairperson of BIG SKY OWNERS ASSOCIATION, INC., the non-profit corporation that executed this document, and acknowledged to me that such non-profit corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

Notary Public for the State of Montana

Carol L. Collins

Printed Name

Residing at: Gallatin Gateway, MT

My commission expires: May 31, 2006

(SEAL)





STATE OF MONTANA

BOOK 490 PAGE 673

County of Gallatin

On this 18 day of May, 2003, before me, a notary public in and for said State, personally appeared Penny Vance/Wm. Olson, known to me to be the Secretary of BIG SKY OWNERS ASSOCIATION, INC., the non-profit corporation that executed this document, and acknowledged to me that such non-profit corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.

(SEAL)



Notary Public for the State of Montana

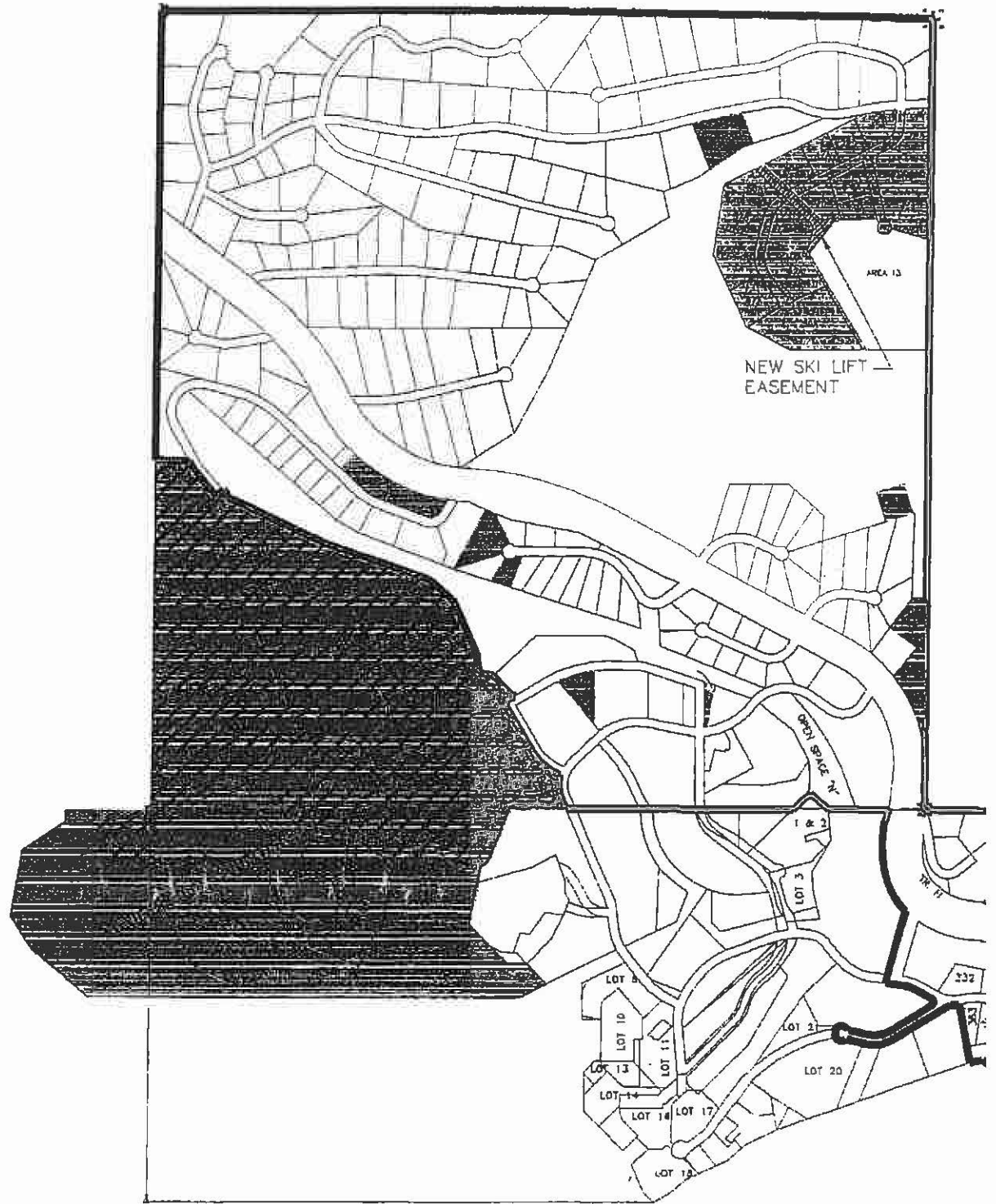
Carol L. Collins *Carol L. Collins*

Printed Name

Residing at: Gallatin Gateway, MT

My commission expires:

May 31, 2006



CASCADE SUBDIVISION  
BIG SKY, MONTANA  
**EXHIBIT "A"**

SHOWING AREAS OF PROPOSED CHANGES TO  
THE CASCADE SUBDIVISION COVENANTS

NOT TO SCALE



LEGEND

PROPOSED BOUNDARY  
SUBJECT TO COVENANTS



CHANGE FROM MULTI-FAMILY  
TO SINGLE-FAMILY



CHANGE FROM BED & BREAKFAST  
TO MULTI-FAMILY CONDO



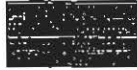
AREA TO BE REMOVED FROM  
CASCADE COVENANTS



POWDER RIDGE SUBDIVISION



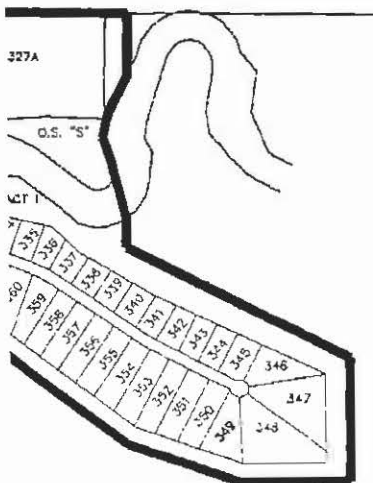
CHANGE TO ALLOW SKI LIFT  
TERMINAL AND OVERHEAD  
CABLE EASEMENTS



ALLOWS BURIED PROPANE  
STORAGE AND DISTRIB.  
FACILITIES



NEW OPEN SPACE



PREPARED BY: GASTON ENGINEERING & SURVEYING  
00-567 Cascade Cov axbt A 2003.dwg  
APRIL, 2003

CASCADE SUBDIVISION  
BIG SKY, MONTANA  
**EXHIBIT "A"**

SHOWING AREAS OF PROPOSED CHANGES TO  
THE CASCADE SUBDIVISION COVENANTS

NOT TO SCALE

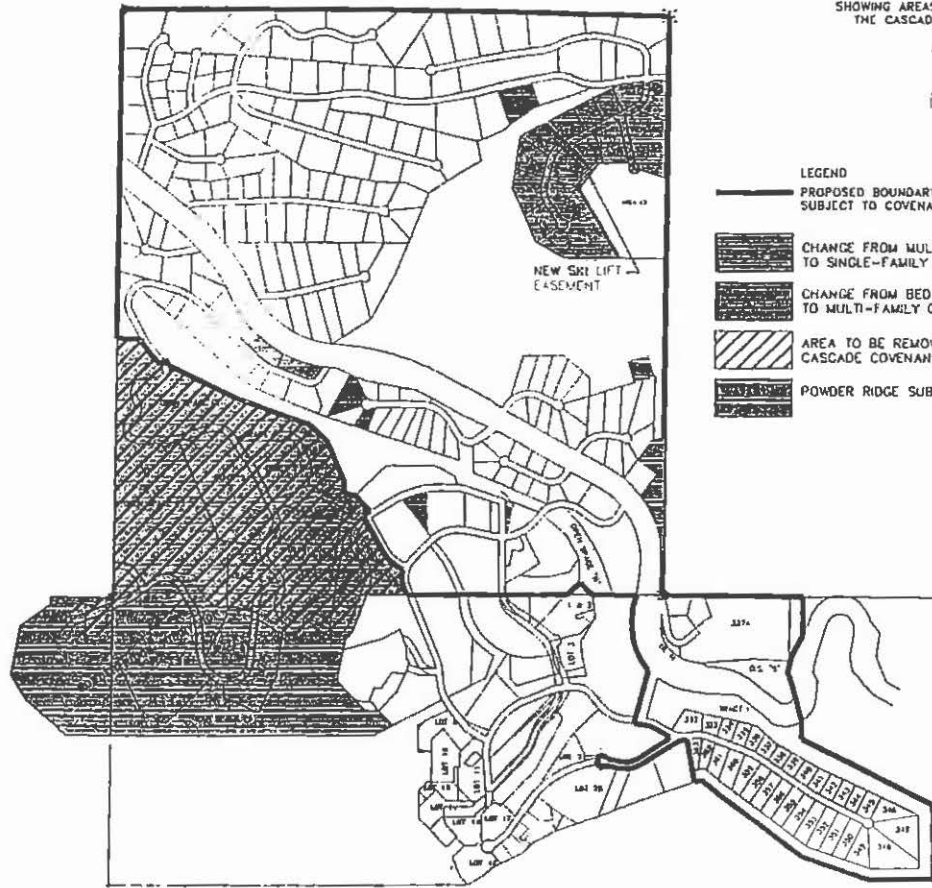


LEGEND

— PROPOSED BOUNDARY  
— SUBJECT TO COVENANTS

- CHANGE FROM MULTI-FAMILY TO SINGLE-FAMILY
- CHANGE FROM BED & BREAKFAST TO MULTI-FAMILY CONDO
- AREA TO BE REMOVED FROM CASCADE COVENANTS
- POWDER RIDGE SUBDIVISION

- CHANGE TO ALLOW SKI LIFT TERMINAL AND OVERHEAD CABLE EASEMENTS
- ALLOWS BURIED PROPANE STORAGE AND DISTRIB FACILITIES
- NEW OPEN SPACE



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