Application for a Variance
(County)

File # _____ Date Sept 15, 2020

Name: Ponderosa Heights Apartments Ph# 406-544-2035 / 406-360-5918

Address: 7105 Highway 12 W, Lolo, MT 59847

Agent Name: Shane Hart Ph# (406) 544-2035

Legal Description:

Lot #: 107, 108, 109 Block#: _____ Subdivision: Ponderosa Heights Phase 2A

COS#: _____ Metes & Bounds Description: (Attach Typed Description)

Note: Provide information on the following condition in your letter explaining your proposal.

A variance from the terms of Resolution 76-113 shall not be granted by the Board of Adjustment unless and until the applicant demonstrates all of the following:

1. That special conditions and circumstances exist which are peculiar to the land such as size, shape, topography or location, that are not applicable to other lands in the same zone. Literal interpretation of the provisions of these regulations would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same zone under the terms of these regulations;
2. That such strict compliance would preclude an effective design solution to the unique circumstance, thus preventing improvement of the livability, operation and efficiency, or appearance of the proposed use or building;
3. The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of these regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare as outlined in Section 8.07 of Resolution 76-113; and
4. The fact that property may be utilized more profitably will not be an element of consideration before the Board of Adjustment.

In considering all proposed variances to these regulations, the Board shall, before making any findings in a specified case, first determine:

1. That the proposed variance will not amount to a change in the use of the property to a use which is not permitted in the zone;
2. That the special conditions and circumstances do not result form the actions of the applicant;
3. That granting the variance requested will not confer a special privilege to the subject property that is denied other lands in the same zone.

Owner Kelly Hart 9-15 2020
Date

Owner's Agent 9-15-2020
Date

Applicant's Responsibility:

An application for a Variance must be made to the Zoning Officer by the property owner or a designated agent. The application and all necessary supporting documentation must be received at least 5 weeks prior to the scheduled meeting. The applicant or the agent should be present at the meeting.

Zoning Officer Responsibility:

The Zoning Officer will send notice of the hearing to property owners within three hundred (300) feet. Notice will also be published twice in a County-approved local news media and the property will be posted with a hearing notice. The Zoning Officer shall inspect all submitted material for compliance and submit a report to the Board of County Commissioners and the Planning and Zoning Commission (if necessary), and the applicant prior to the meeting.

Board of County Commissioners Responsibility:

The Board County Commissioners must take into consideration the Zoning Resolution and public testimony in making the decision to deny or approve the request in whole or in part. The Board may require conditions for approval by which the decision is bound. A quorum must be present to take any action.

Ponderosa Heights Apartments LLC

7105 Highway 12 W
Lolo, MT 59847

Sept 15, 2020

Matt Heimel and Missoula County Board of Adjustment Members
127 E. Main Street
Missoula, MT 59802

RE: Ponderosa Heights Apartments LLC – Ponderosa Heights Phase 2A Lots 107-109

Dear Matt Heimel and Board of Adjustment Members,

In August a one time variance to the Ponderosa Heights Subdivision "No Build Zone" covenants was approved to build carports over 23 existing parking spaces on the above referenced property Lots 107-108. Mistakenly, we did not include Lot 109 in many of the references and 4 of the 23 parking spaces that would be covered by carport, are on Lot 109. We are asking for you to include Lot 109 in the one-time variance granted.

Please find attached, our request for a one time variance to the Ponderosa Heights Subdivision "No Build Zone" covenants. Our request meets the requirements of the Missoula County Zoning Regulations 8.26.E as well as the Missoula Subdivision Regulations 6.7. The variance would allow carports to be built over 23 existing parking spaces on the above referenced property. The 'no build zone' hill of lots 107,108, and part of 109 was mitigated back in 2017 in order to create the existing parking lot. The hill was cut back 27 ft and a retaining wall was built.(Google Earth Image with photos) Included within the attached variance request are additional details pertaining to the request and information for your review. Below is a summary of the project and contact information for the property owner.

Project
The property (lot 107, 108) is currently owned by Ponderosa Heights Apartments LLC and has three multi-family buildings, built in 2017, located on the parcel with the approved required parking. The west 4 parking spaces are on Lot 109. These four spaces are in an Easement " for the exclusive use and benefit of adjacent Lots 107 and 108 and their owners" (Ponderosa Heights Apts). (See attachments Pinyon Way Townhomes covenants, etc..) Ponderosa Heights Apartments LLC is still the primary owner on record for the common area. (See attached from MT Cadastral and Missoula County Property Tax Online)

Ponderosa Heights Apartments LLC is requesting the permission to build a carport over the existing 23 parking spaces (used since 2017) located in a 'no build zone'. This is for the benefit of tenants living in the apartments already constructed on these lots. The carport would allow coverage for the tenant's vehicles and would also help with parking lot snow removal in the winter. Carport would be 207 ft x 18 ft. (See Google Earth Image).

This request for variance meets all the criteria for review listed in the Variance Application as well as the Missoula County Zoning Regulations 8.26.E

1. Property in question is currently a parking lot and will stay a parking lot (with carport cover).

2. This 'no build zone' is the southern 60ft of Lots 106-109 (measured from the edge of the Ridgeway Drive right-of-way). When the apartment project was constructed in 2017, the hillside prompting the 'no build zone' was mitigated to make access for parking and apartment construction. The bank on Lot 107, 108, and part of 109 was cut back 27 ft to allow for the parking lot. That leaves only 33 ft of the hillside 'no build zone' remaining. An engineered concrete retaining wall, approved by the county, was built 4-8 feet high along the south side of the parking spaces at the base of the hillside. Grading and drainage plan for the retaining wall and parking lot were approved by Missoula County in 2017. (see attached pictures)

3. The parking lot already meets all county codes. The carport would be tucked out of sight under Ridgeway Drive embankment and behind the 3 building apartment complex. Literal enforcement of the covenant and code would not take into account the bank mitigation work and retaining wall that was done to remove a portion of the hill from the 'no build zone' to allow parking.

4. The carports would not be injurious or detrimental to anyone. Approval for a variance to the covenants 'no build zone' rule was sought and obtained by over 2/3 of the Ponderosa Heights Property Owners and HOA Board (see letters attached from 2017 and 2019- survey results were sent to the county by the Ponderosa Heights HOA). This includes permission from other owners of Lot 109. The HOA also has this variance approval letter posted on their website for all HOA members to see.

The carport is an added benefit for the welfare of the apartment tenants who are Missoula County residents. The use of the property as a tenant parking lot will not be changed. There are no special conditions or circumstances involved in this variance. Lot 105 already has a carport over tenant parking, so it would not be the first carport in the multi-family housing area of Ponderosa Heights subdivision. Ponderosa Heights Apartments LLC has already applied and received approval for another carport on Lot 107 out of the 'no build zone'.

(i) The location, character and natural features of the property make this location perfect for a parking lot with carport. The ground is already paved and retaining wall is already built.

(ii) Property is already used as parking lot, but covered parking would be added benefit for tenants (Missoula County residents) and helpful for snow removal in winter.

(iii) Property is already used as parking lot, but covered parking would be added benefit for tenants (Missoula County residents) and helpful for snow removal in winter.

(iv) The use conforms to objectives of Missoula County zoning regulations because it already has been approved as a parking lot.

(v) The current permitted parking lot use and proposed carports meet the current Missoula County Zoning Resolution (MCRZ) Designation for the north Lolo Rural Special Zoning District / Ponderosa Heights Subdivision.

(vi) The use will not adversely affect nearby properties or their occupants. Permission for a variance to the covenants 'no build zone' rule was sought and obtained by over 2/3 of the Ponderosa Heights Property Owners and HOA Board (see letters attached- survey results were sent to the county by the Ponderosa Heights HOA). This includes permission from other owners of Lot 109.

(vii) Parking spaces are already in place, cars already parked there. It will not add or delete any spaces.

(viii) No vegetation, no change to topography and drainage plan already approved by county for parking lot in 2017.

(ix) No need for public utilities or services.

(x) Public opinion has been neutral or in favor of project. Permission for a variance to the covenants 'no build zone' rule was sought and obtained by over 2/3 of the Ponderosa Heights Property Owners and HOA Board (see letters attached- survey results were sent to the county by the Ponderosa Heights HOA).

Properties adjacent to the property owners are.

North: Ponderosa Development Inc., P.O. Box 23, Lolo, MT 59847
Geocode:04:2092-27-1-05-40-0000
East: (See Google Image One) Albert Zepada, P.O. Box 869, Lolo, MT 59847
Geocode:04-2092-26-3-03-19-5999
West: Ponderosa Heights Apartments LLC., 7105 Hwy 12 W, Lolo, MT 59847
Geocode:04-2092-26-3-03-23-0000
South: (See Google Image One) Keith Broere, P.O. Box 1630, Lolo, MT 59847
Geocode:04-2092-27-3-01-04-0000

Property Owner: Ponderosa Heights Apartments LLC
7105 Highway 12 W
Lolo, MT 59847
(406) 544-2035 Shane Hart/(406)360-5918 Kelly Hart

We look forward to working with you regarding the variance request. If you have any questions or need any additional information please do not hesitate to contact us directly via email at khart.mt@gmail.com or by phone at (406) 544-2035 or (406)360-5918.

Sincerely,

Shane and Kelly Hart
Owners, Ponderosa Heights Apartments, LLC

43
SPS

After Recording Return To:
Chris Johnson
Worden Thane, PC
P.O. Box 4747
Missoula, MT 59806

TOWN000042 Pages:43 Fee:$301.00
09/07/2017 02:47:00 PM Townhome
Tyler R. Gernant, Missoula County Clerk & Recorder

DECLARATION OF TOWNHOMES, COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE PINYON WAY TOWNHOMES

THIS DECLARATION OF TOWNHOMES is made on the 22nd day of August, 2017, by Ponderosa Heights Apartments LLC, a Montana limited liability company, of 7105 Hwy 12 West, Lolo, MT 59847, and provides as follows:

RECITALS

1. Ponderosa Heights Apartments LLC ('Declarant') is the owner of Real Property located in Missoula County, Montana, which is described as follows:

   Lot 109 of Ponderosa Heights, Phase 2A, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof.

2. To be located upon the Real Property are four Townhomes, consisting of two buildings with each building being part of two separate Townhomes with a shared common wall, designated as Townhome Unit 1, Townhome Unit 2, Townhome Unit 3, and Townhome Unit 4, and which Townhome Units are herein declared, and shall hereinafter be conveyed as Townhomes, and which Townhomes are pending completion of construction of the dwellings that will constitute part of the Townhome Units.

3. Additionally, Declarant wishes to place restrictions, covenants, conditions and easements upon the Real Property for the use and benefit of the Real Property, itself, and all future owners of all or any part of the Real Property, which restrictions, covenants, conditions and easements shall run with the Real Property and shall be binding upon all parties having or requiring any right title or interest in any part of the Real Property and shall inure to the benefit of and bind each successor in interest to the owner thereof.

vi. Easement through the general Common Areas for ingress and egress for all persons making use of such Common Areas in accordance with the terms of this Declaration, and; easement and unrestricted right of access, ingress and egress across Common Areas for the use and benefit of Unit 3 and Unit 4, as depicted on the attached site plan.

vii. Easements through, over or under the Townhome Units for all facilities for the furnishing of utility services within the buildings, which facilities shall include but not be limited to conduits, pipes, ducts, plumbing and wiring; provided that the easements for such facilities through a Townhome Unit shall be substantially in accordance with the plans of the building and as such facilities may exist as of the date of this Declaration or as may be built.

viii. Easement for the use and benefit of the adjacent Lots 107 and 108 of Ponderosa Heights, Phase 2A, to use the Parking and Access areas within the General Common Element area as depicted on the attached site plans. The four parking areas located and depicted in the Parking and Access areas are for the exclusive use and benefit of Lots 107 and 108, and their owners, tenants, guests, and assigns, and may not be used by the Owners of Pinyon Way Townhomes Units, nor their tenants, guests, and assigns. General ingress and egress is also created and granted herein for the use and benefit of Lot 108 and Lot 107 of Ponderosa Heights, Phase 2A, over and across the driveways depicted on the site plan and designated and Parking and Access area. No parking is such designated area is allowed, except in the depicted four parking spaces.

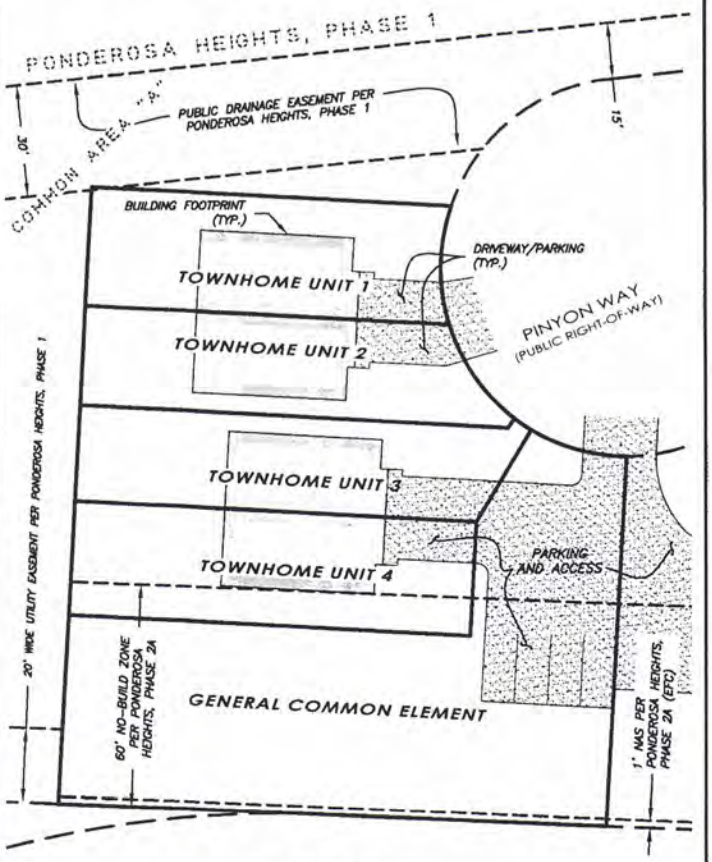
b. Delegation of Use. Any Owner may delegate his right of enjoyment to the Townhome Unit to his guests or tenants, who reside in such Owner's Townhome Unit. All such persons shall be subject to the rules concerning use as the Association may adopt. Each Owner shall be responsible to assure his guests and tenants abide by the terms of this Declaration, the Articles of Incorporation of the Association, its By-Laws and any rules which it might adopt.

5. **LEASE OF A TOWNHOME UNIT.**

Any Owner shall have the right to lease his Townhome Unit upon such terms and conditions as the Owner may deem advisable subject to this Section. All leases shall be in writing and shall have an initial term of at least 30 days, and shall provide that the lease is subject to the terms of this Declaration, the Articles of Incorporation of the Association, its By-Laws and any rules which it might adopt. All such leases shall provide that any failure of a lessee to comply with the terms of this Declaration, the Articles of Incorporation of the Association or its By-Laws or any rules adopted by the Association shall be a default under the lease or rental agreement. If any lease does not contain the foregoing provisions, such provisions

EXHIBIT B

DEPICTING TOWNHOMES AND PARKING ON LOT 109 OF PONDEROSA HEIGHTS, PHASE 2A, LOCATED IN THE SW1/4 OF SEC. 26, T.13N., R.19W., P.M.M., MISSOULA COUNTY, MONTANA



GRID N

15 0 15 30
SCALE IN FEET

BASIS OF BEARING
MONTANA STATE PLANE – ZONE 2500
GROUND (TRUE) DISTANCES
GRID NORTH

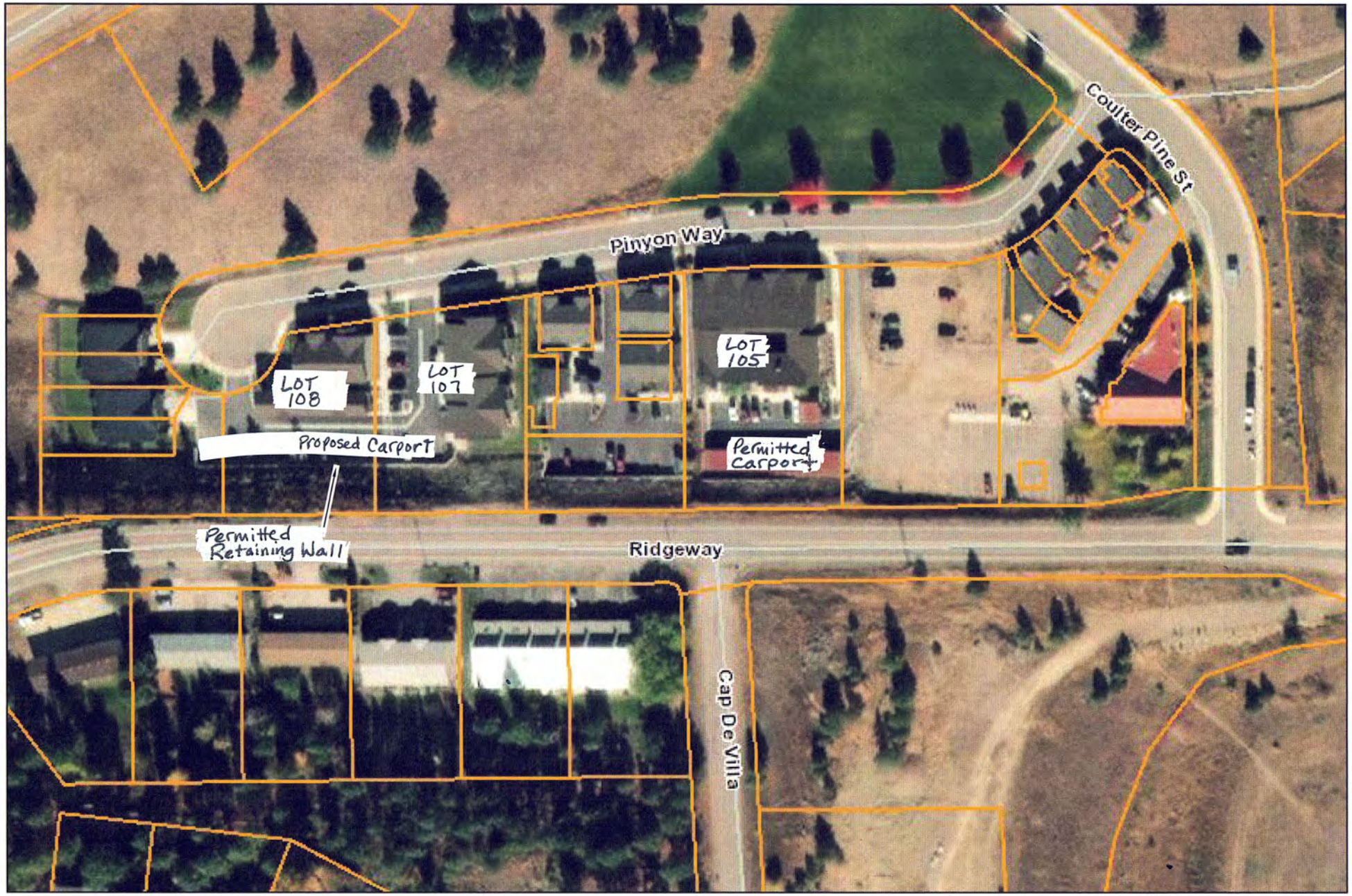
LEGEND

NAS = NO-ACCESS STRIP
EFC = SCALE EXAGGERATED FOR CLARITY

PREPARED BY: TLI PROJ. #17-4547

TERRITORIAL LANDWORKS, INC.
CIVIL ENGINEERING • SURVEYING • LAND USE CONSULTING
www.TerritorialLandworks.com
Phone: 406/721-0142 PO Box 3851
Fax: 406/721-5224 Missoula, MT 59806

SHEET 3 OF 3

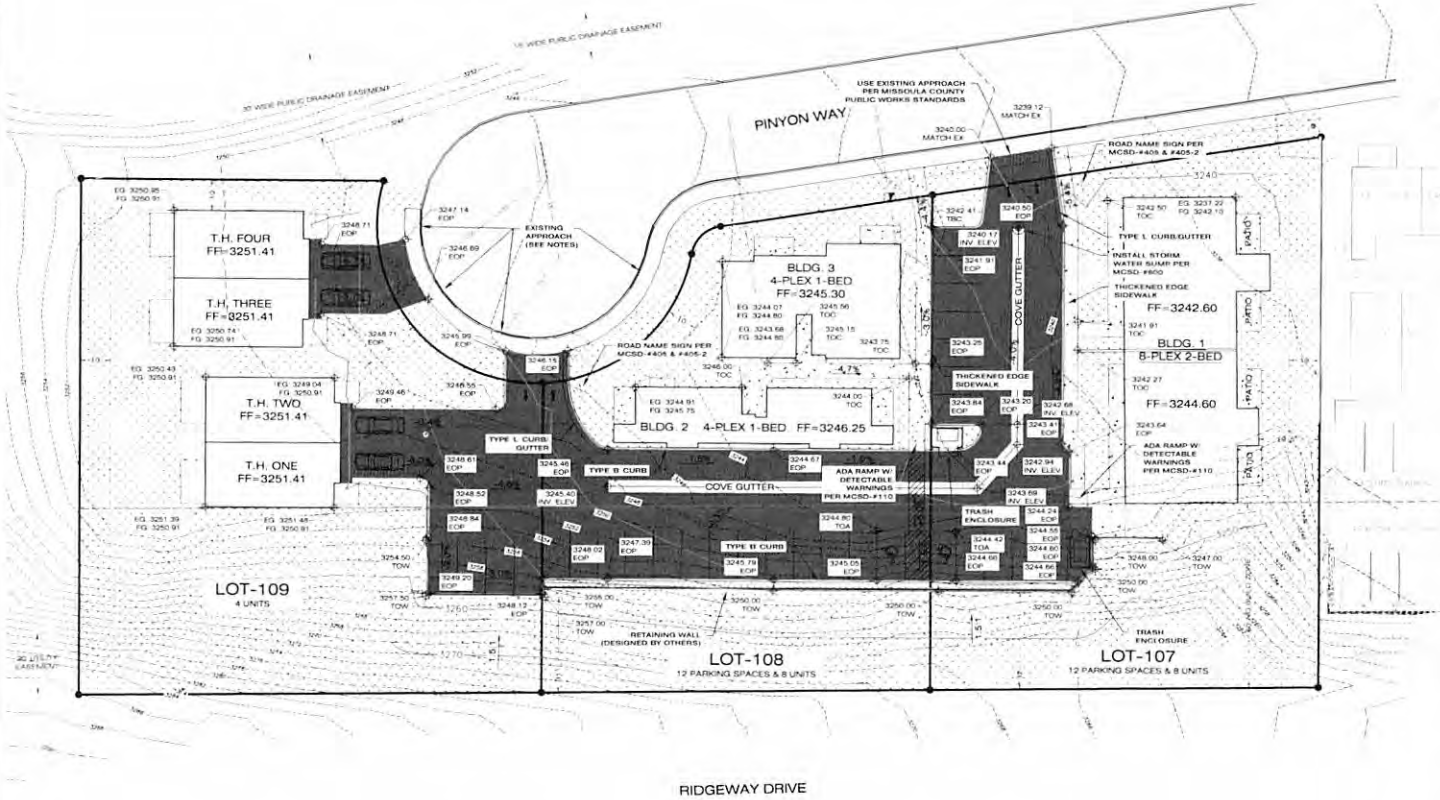


GOOGLE EARTH IMAGE TWO

SCALE: N.T.S.

GOOGLE EARTH IMAGE WITH PHOTOS

SCALE: N.T.S.



LEGEND

	PROPERTY LINE	TOC	TOP OF CONCRETE
	BUILDING SETBACK	TOA	TOP OF ASPHALT
	EXISTING WATER MAIN	EOP	EDGE OF PAVEMENT
	EXISTING WATER SERVICE	TBC	TOP BACK OF CURB
	EXISTING SEWER MAIN	TOW	TOP OF WALL
	EXISTING SEWER SERVICE	FG	FINISHED GRADE
	EXISTING TELEPHONE LINE	EG	EXISTING GRADE
	EXISTING FIRE HYDRANT		
	EXISTING WATER VALVE		
	EXISTING WATER METER		
	EXISTING SEWER MANHOLE		
	EXISTING TELEPHONE BOX		
	EXISTING CABLE BOX		
	EXISTING ELECTRIC TRANSFORMER		
	PROPOSED CONCRETE SURFACE		
	EXISTING ASPHALT SURFACE		
	EXISTING GRAVEL SURFACE		
	PROPOSED ASPHALT PARKING LOT		
	GRASS SURFACE		
3260	PROPOSED 10' CONTOUR		
	PROPOSED 2' CONTOUR		
3240	EXISTING 10' CONTOUR		
	EXISTING 2' CONTOUR		
XXXX.XX EOP	SPOT ELEVATION		
EG XXXX.XX FG XXXX.XX	GROUND ELEVATION AT BUILDING CORNER		

GENERAL NOTES

THESE PLANS ARE NOT TO BE USED FOR CONSTRUCTION PURPOSES UNTIL SO NOTED. PLANS ARE FOR REVIEW AND PERMITTING PURPOSES ONLY UNTIL NOTED AS "ISSUED FOR CONSTRUCTION"

DO NOT SCALE DRAWINGS. IF CLARIFICATION FOR DIMENSIONING IS REQUIRED, CONTRACTOR SHALL NOTIFY ENGINEER TO OBTAIN RESOLUTION IN WRITING PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.

CONTRACTOR SHALL REVIEW GEOTECHNICAL REPORT PRIOR TO CONDUCTING ANY SITE WORK. CONTRACTOR TO NOTIFY CIVIL/SITE ENGINEER IMMEDIATELY IF CONDITIONS FOUND ARE DIFFERENT THAN INDICATED IN THE REPORT OR IF ANY CONDITIONS MAY WARRANT SPECIAL CONSTRUCTION ACTIVITIES.

SEE ARCHITECTURAL SITE PLAN FOR DIMENSIONS AND BUILDING SETBACKS FOR SITE IMPROVEMENT INFORMATION NOT SHOWN HEREON.

SEE ARCHITECTURAL PLANS FOR ALL PARKING LOT STRIPING, HANDICAP STALL DIMENSIONS, AND BUILDING LAYOUT INFORMATION INCLUDING DOOR PENETRATIONS AND FOUNDATION LOCATIONS.

SEE ARCH PLANS FOR DOWNSPOUT LOCATIONS, SIZES, & MATERIALS.

SEE LANDSCAPE PLANS FOR TREE LOCATIONS, SPECIES, & INSTALLATION DETAILS.

CONTRACTOR TO COORDINATE WITH ENGINEER FOR ANY POTENTIAL FIELD DISCREPANCIES WITH INFORMATION SHOWN HEREON.

ALL WORK MUST BE IN ACCORDANCE WITH CURRENT MPWSS AND MISSOULA COUNTY PUBLIC WORKS STANDARDS. THESE SPECIFICATIONS ARE INCLUDED IN THE WORK SCOPE BY REFERENCE.

APPROACH NOTES

THE SUBJECT PROPERTY (LOTS 107-109) HAS FIVE (5) EXISTING COUNTY APPROACHES ON TO PINYON WAY.

ALL UNUSED APPROACHES MUST BE REMOVED AND REPLACED WITH TYPE 'F' CURB/GUTTER AND SIDEWALK PER MISSOULA COUNTY PUBLIC WORKS DETAIL MCSD #100 AND #106.

NEW APPROACHES MUST BE CONSTRUCTED PER MISSOULA COUNTY REQUIREMENTS. SEE DETAILS #102 AND #106.

CONTRACTOR TO OBTAIN COUNTY APPROACH PERMIT PRIOR TO CONSTRUCTION, IF DEEMED NECESSARY BY THE MISSOULA COUNTY PUBLIC WORKS DEPARTMENT.

GRANITE CREEK ENGINEERING
PO BOX 268
FLORENCE, MT 59833
OFFICE 406.926.6700
FAX 406.369.6860

REVISION	DATE
PER MCPW	10 12 16
PER MCPW	10 17 16
PER OWNER	10 25 16

PROJECT TITLE: LOLO PEAK APARTMENTS

SHEET TITLE: GRADING & DRAINAGE PLAN

PROJECT LOCATION: LOTS 107-109 OF PONDEROSA HEIGHTS LOLO MISSOULA COUNTY

PROJECT NUMBER: 16-196

DESIGNED: JW
DRAFTED: KBE
DATE: 11/09/2016

SHEET NUMBER: 1 of 3

6/20/17

To Whom It May Concern;

A matter has been brought to the attention of the H.O.A. of Ponderosa heights regarding the "no build zone" on lots 107, 108 and 109 phase 2A of Ponderosa Heights. The owner of properties has asked the HOA to be able to build carports within the no build zone. After consideration the HOA can find no reason to deny this request. The HOA believes that the factors that required the no build zone have been mitigated by retaining walls and topographic changes to these lots. Therefore the HOA approves of the carports to be constructed on lots 107, 108 and 109 Ponderosa Heights.

Paul Rossignol

Ponderosa Heights Homeowner's Association, Inc.
PO Box 23
Lolo, Montana 59847

July 30, 2019

Shane and Kelly Hart (Ponderosa Heights Apts LLC), owners of lots 105, 107-109 partial, (6417/6424/6438 Dylan Drive) are requesting a variance from the Missoula County Planning Office in order to erect carports over existing parking spaces for the benefit of tenants in the apartments already constructed on these lots. The one-time variance is requested because the carports (if approved) would be constructed in a strip of land identified by the County as a "no build" zone.

The Ponderosa Heights Homeowner's Association Board of Directors unanimously approved this request May 16, 2019. Because this request requires a variance from the Declaration of Restrictive Covenants of the HOA, approval of the request must also be approved by 2/3 of the 88 HOA property owners. Ballots were distributed to property owners in July 2019 soliciting votes on the question. By July 30, 2019, 61 complete, signed ballots approving the variance were received and verified by the recording secretary. The number of "yes" votes exceeds the 59 votes needed to meet the 2/3 standard.

Ponderosa Heights Homeowner's Association approves the Hart request for a variance to the no-build zone in order to erect carports.

Board of Directors
Ponderosa Heights Homeowners Association, Inc.

By:

Jacqueline A Hofmann
Jacqueline Hofmann, President

James Thomas, Vice President

Paul Rossignol, Treasurer

On This Date:

30 Jul 2019

REPUBLIC
SERVICES

CAUTION
CLEARANCE
9 FT 10 IN
Jeep
BRC189

6438

6438

Montana Cadastral

Not secure | svc.mt.gov/msl/mtcadastral/

Apps | Outlook - hartsmot... | a1.fireservices@yah... | (500 unread) - kelly... | NOAA WEATHER | Western Power Spo... | My Ebay | Facebook | O'Reilly First Call H... | FedEx | Discovery Ski Area! | Lolo Pass Webcam | Gtown Lake SCA

New tab Ctrl+T
New window Ctrl+N
New incognito window Ctrl+Shift+N
History
Downloads Ctrl+J
Bookmarks
Zoom - 100% +
Print... Ctrl+P
Cast...
Find... Ctrl+F
More tools
Edit Cut Copy Paste
Settings
Help
Exit

Montana Cadastral

SEARCH
DATA
TOOLS
LEGEND

Try Cadastral Beta

Print Button workarounds

DISCLAIMER
HELP

Property Record Card
Tax Year 2020
Print

Summary

Primary Information

Property Category: RP
Subcategory: Condo/Townhouse Master
Geocode: 04-2092-26-3-03-25-5000
Assessment Code: 0004306116
Primary Owner:
PONDEROSA HEIGHTS APARTMENTS LLC
7105 HIGHWAY 12 W
LOLO, MT 59847-9446
PropertyAddress: 6443 DYLAN DR
LOLO, MT 59847
COS Parcel:
NOTE: See the Owner tab for all owner information
Certificate of Survey:
Subdivision: PINYON WAY TOWNHOMES
Legal Description:
PINYON WAY TOWNHOMES, S26, T12 N, R20 W, UNIT MASTER CA
Last Modified: 7/14/2020 6:48:05 PM

General Property Information

Neighborhood: 204.020.K
Property Type: NV - Non-Valued Property
Living Units: 1
Levy District: 04-3588-7-7
Zoning:
Ownership %: 100
Linked Property:
No linked properties exist for this property
Exemptions:
No exemptions exist for this property
Condo Ownership:
General: 0
Limited: 0

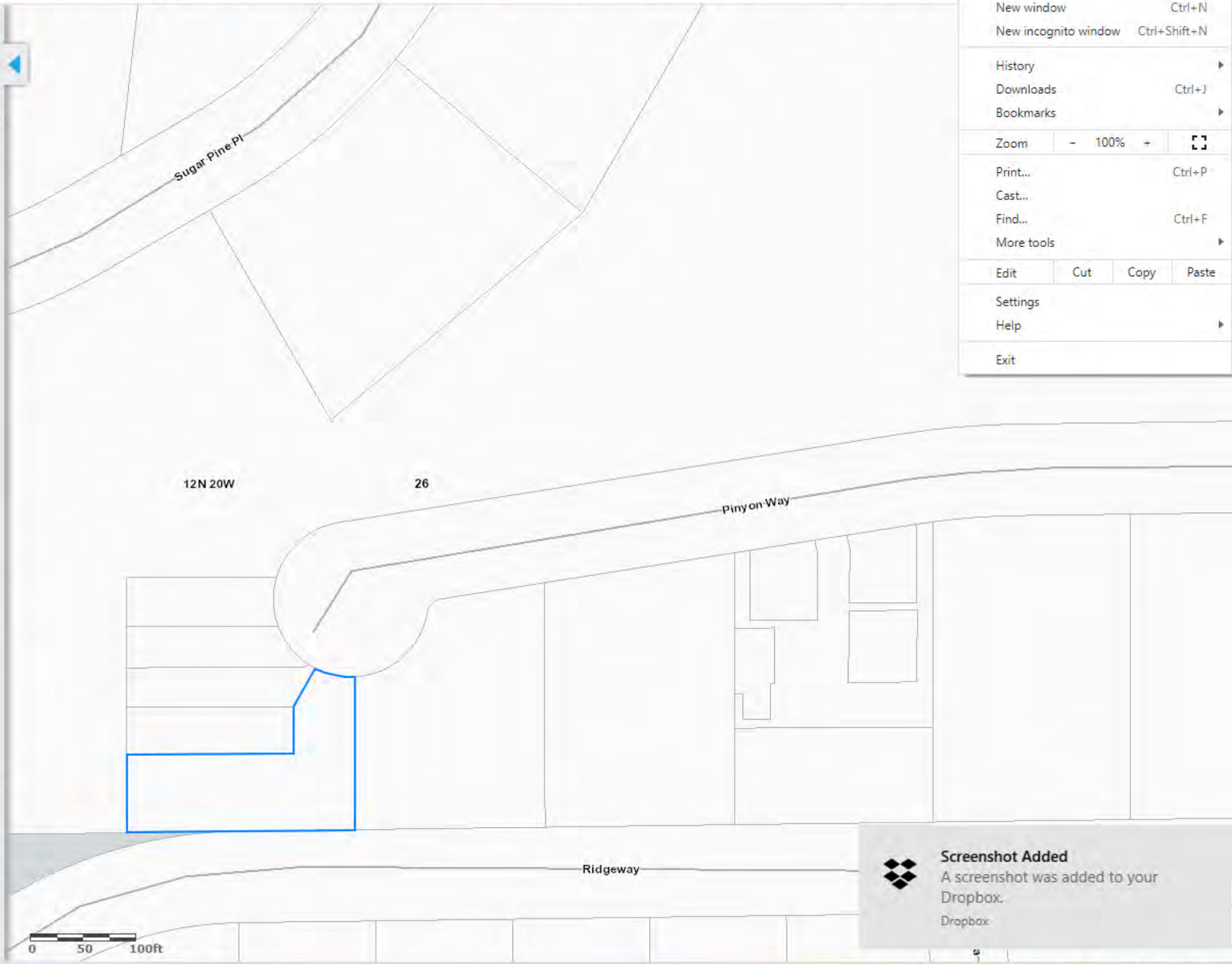
Property Factors

Topography:
Fronting:
Utilities:
Parking Type:
Access:
Parking Quantity:
Location:
Parking Proximity:

Land Summary

Land Type	Acres	Value
Grazing	0.000	00.00
Fallow	0.000	00.00
Irrigated	0.000	00.00
Continuous Crop	0.000	00.00
Wild Hay	0.000	00.00
Farmsite	0.000	00.00

Owners
Appraisals
Market Land Info
Dwellings
Other Buildings/Improvements
Commercial
Ag/Forest Land



Screenshot Added
A screenshot was added to your Dropbox.
Dropbox

Type here to search

11:56 AM
9/17/2020

Missoula County Property Inform

gis.missoulacounty.us/propertyinformation/

Apps | Outlook - hartsmot... | a1.fireservices@yah... | (500 unread) - kelly.... | NOAA WEATHER | Western Power Spo... | My Ebay | Facebook | O'Reilly First Call H... | FedEx | Discovery Ski Area! | Lolo Pass Webcam | Gtown Lake SCAN | Other bookmarks

Address | Geocode / Tax ID | Legal | PLSS | Point | Road | Name | Docs | Plats

Geocode: 04209226303255000 Go

Tax ID: Go

Open

FACTS | TAXES | DOCS | PERMIT

FLOOD | VOTE | SEPTIC | AIR

Tax ID: 4306116 Tax Year: 2020

PLSS: T12NR20W-26 Levy: 04-3588-7-7

Geocode: 04-2092-26-3-03-25-5000 CAMA

Legal: 1 of 5 Next

PINYON WAY TOWNHOMES, S26, T12 N, R20 W, UNIT MASTER CA

Owner(s):

PONDEROSA HEIGHTS APARTMENTS LLC

Mail: 7105 HIGHWAY 12 W LOLO, MT 59847-9446

Prop: 6443 DYLAN DR LOLO, MT 59847

Physical Address(es):(Click address to zoom)

No Physical Address

Survey Info: (Based on Legal)

SUB: PINYON WAY TOWNHOMES View

COS: View

933-846
930-267
804-575
Deeds

Property Type: NV - Non-Valued Property

DOR AC/SqFt: 0.218 / ~9496.08

GIS AC/SqFt: 0.22 / ~9568.01

Res/Com/Oby: 0/0/0

Living Units: 1

HELP CONTACT

Imagery Dates | Plat Books | BLM/GLO | Google Maps | Lv: 20 | 1: 564.248588 | Lng/X: -115.37623 Lat/Y: 47.62421

Type here to search

2:45 PM 9/18/2020

200613053
Page: 11 of 27
06/06/2006 10:51A
Missoula County Vickie M Zeier CKV Bk-775 Pg-1016

E. **No Build Zones.** There are No Build Zones designated along the southern 60 feet of Lots 106 through 109 and along the southern 25 feet of Lots 103 through 105 measured from the edge of the Ridgeway Drive Right-of-Way as depicted on the phase of the plat. These No Build Zones shall be shall be kept open and free of structures, including buildings, mobile homes, garages, carports. The no build zones do not exclude fences, underground utilities, or improved surfaces for parking and pedestrian traffic. A "No Build Zone" map is attached as Exhibit A.

F. **Living With Wildlife.** Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants.

Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, black bear, mountain lion, wolf, coyote, fox, skunk, raccoon and magpie.

Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see the Education portion of FWP's website at http://www. fwp.mt. gov/.

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value:

1. Homeowners must be aware of the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order toavoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.

2. Gardens and fruit trees can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because rotting vegetable material can attract bears, skunks and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.

3. Garbage must be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons and dogs. Do not set garbage cans out until the morning of garbage pickup.

32-32

PLAT OF

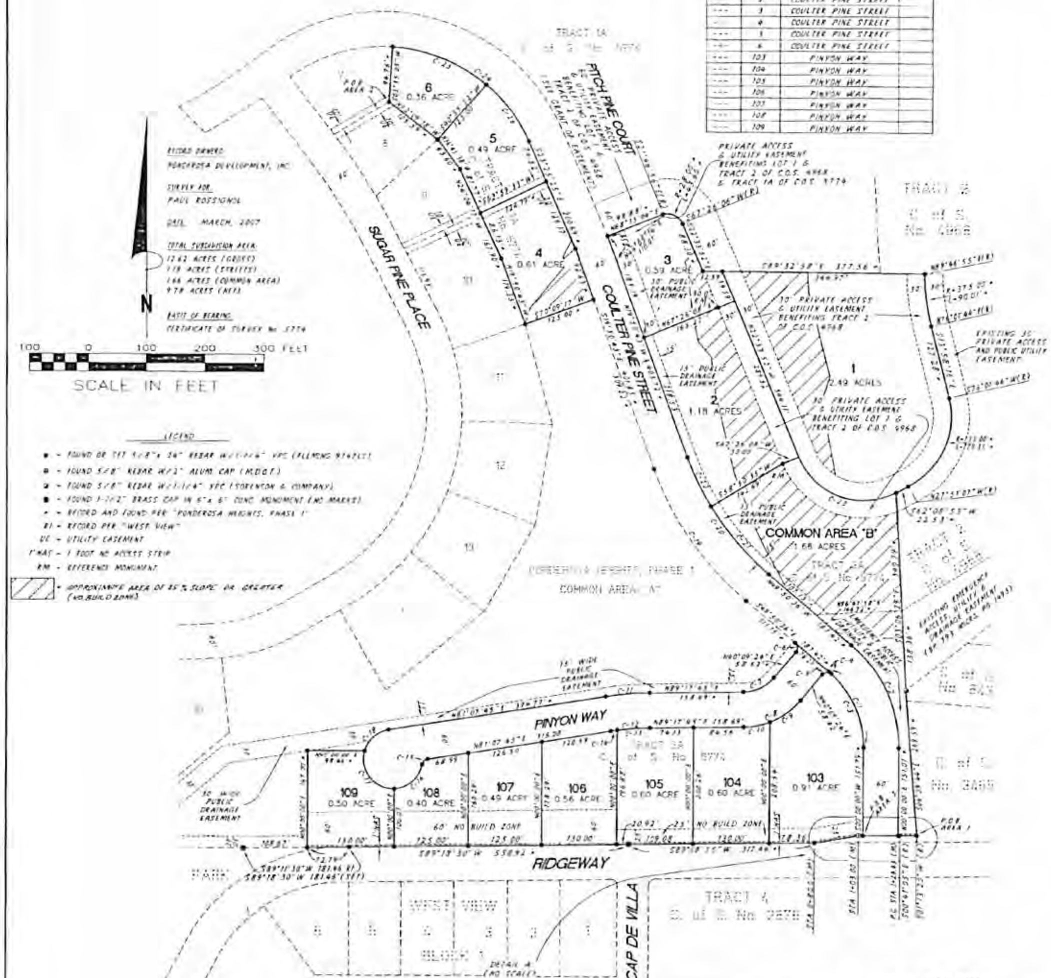
PONDEROSA HEIGHTS, PHASE 5-2A

32-32

A MAJOR SUBDIVISION PLAT LOCATED IN THE W1/2 OF SECTION 26, T.12N., R.20W., P.M.M., MISSOULA COUNTY, MONTANA

ADDRESS BLOCK

BLOCK	LOT	STREET	No.
---	1	PITCH PINE COURT	
---	2	COULTER PINE STREET	
---	3	COULTER PINE STREET	
---	4	COULTER PINE STREET	
---	5	COULTER PINE STREET	
---	6	COULTER PINE STREET	
---	103	PINYON WAY	
---	104	PINYON WAY	
---	105	PINYON WAY	
---	106	PINYON WAY	
---	107	PINYON WAY	
---	108	PINYON WAY	
---	109	PINYON WAY	



CURVE DATA

I.D.	RADIUS	LENGTH	RADIAL BEARINGS	
C-1*	170.00'	147.95'	S90°00'00"W	S40°09'24"W
C-2*	230.00'	200.09'	S90°00'00"W	S40°09'24"W
C-3	170.00'	141.76'	S42°13'15"W	N90°00'00"W
C-4	170.00'	6.13'	S40°09'24"W	S42°13'19"W
C-5	11.00'	17.68'	S49°50'36"E	S42°13'19"W
C-6*	11.00'	17.28'	N49°50'36"W	S40°09'24"W
C-7*	70.00'	60.03'	N00°42'15"W	N49°50'36"W
C-8	130.00'	111.49'	N00°42'15"W	N49°50'36"W
C-9	130.00'	64.95'	N21°13'03"W	N49°50'36"W
C-10	130.00'	46.54'	N00°42'15"W	N21°13'03"W
C-11*	530.00'	75.54'	S08°52'15"E	S00°42'15"E
C-12	470.00'	66.99'	S08°52'15"E	S00°42'15"E
C-13	470.00'	58.03'	S07°32'07"E	S00°42'15"E

I.D.	RADIUS	LENGTH	RADIAL BEARINGS	
C-14	470.00'	10.96'	S08°52'15"E	S07°32'07"E
C-15	11.00'	15.67'	S80°03'06"E	S08°52'15"E
C-16	51.00'	68.71'	N02°51'45"W	N80°03'06"W
C-17	51.00'	97.04'	S73°50'51"E	N02°51'45"W
C-18*	51.00'	57.84'	S73°50'51"E	S08°52'15"E
C-19*	530.00'	277.49'	N40°09'24"E	N70°09'17"E
C-20*	475.00'	246.08'	N40°09'24"E	N70°09'17"E
C-21	470.00'	153.28'	N40°09'24"E	N58°50'35"E
C-22	470.00'	92.79'	N58°50'35"E	N70°09'17"E
C-23	120.00'	199.57'	N61°26'08"E	N27°51'12"W
C-24*	270.00'	296.84'	S03°35'05"W	S66°34'35"W
C-25	270.00'	174.38'	S03°35'05"W	S40°35'22"W
C-26	270.00'	122.46'	S40°35'22"W	S66°34'35"W

1/4	SEC	T	R	
	26	12N	20W	P.M.M.

SHEET No. 1 of 1

32-32

SURVEY BY:
TERRITORIAL - LANDWORKS, INC
P.O. BOX 3851
MISSOULA, MONTANA 59806 (406)721-0142
C:\PROJECTS\ROSSIGNOL\DWG\PHASE5.DWG 03-180

DEDICATION:

THE UNDERSIGNED HEREBY CERTIFIES THAT IT HAS SURVEYED, SUBDIVIDED AND PLATTED INTO LOTS, STREETS AND COMMON AREA AS SHOWN ON THIS PLAT, HEREUNTO ANNEXED THE FOLLOWING DESCRIBED TRACTS OF LAND TO WIT:

PORTIONS OF TRACT 5A OF CERTIFICATE OF SURVEY No. 5774, LOCATED IN THE W1/2 OF SECTION 26, T12N, R20W, P.M.M., MISSOULA COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AREA 1: BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT 5A, THENCE 28.83 FEET ALONG THE ARC OF A NON TANGENT CURVE TO THE LEFT WITH THE RADIUS POINT BEARING S01°13'20"W 866.15 FEET; THENCE S89°18'55"W 2.83 FEET; THENCE N00°00'00"E 151.07 FEET; THENCE 200.09 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT WITH THE RADIUS POINT BEARING N90°00'00"W 230.00 FEET; THENCE N49°50'36"W 187.42 FEET; THENCE 246.08 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT WITH THE RADIUS POINT BEARING N40°09'24"E 470.00 FEET; THENCE N19°50'43"W 403.72 FEET; THENCE N68°13'04"E 49.83 FEET; THENCE 43.80 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT WITH THE RADIUS POINT BEARING S21°46'56"E 28.00 FEET; THENCE S22°33'52"E 89.38 FEET; THENCE S89°32'58"E 377.56 FEET; THENCE 90.07 FEET ALONG THE ARC OF A NON TANGENT CURVE TO THE LEFT WITH THE RADIUS POINT BEARING N89°46'33"E 375.00 FEET; THENCE S13°58'16"E 127.28 FEET; THENCE 179.55 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT WITH THE RADIUS POINT BEARING S76°01'44"W 155.00 FEET; THENCE S62°08'53"W 22.53 FEET; THENCE S05°06'29"E 360.79 FEET; THENCE S04°39'44"E 249.59 FEET TO THE POINT OF BEGINNING, CONTAINING 5.92 ACRES, BEING SUBJECT TO ALL EASEMENTS EXISTING, SHOWN, APPARENT OR OF RECORD, AND RESERVING THEREFROM PRIVATE ACCESS AND UTILITY EASEMENTS AS SHOWN ON AND ALL ACCORDING TO THIS PLAT.

AREA 2: BEGINNING AT THE SOUTHEAST CORNER OF LOT 7 OF PONDEROSA HEIGHTS, PHASE 1, THENCE N03°35'05"E 94.76 FEET; THENCE 296.84 FEET ALONG THE ARC OF A NON TANGENT CURVE TO THE RIGHT WITH THE RADIUS POINT BEARING S03°35'05"W 270.00 FEET; THENCE S23°25'23"E 200.69 FEET; THENCE S19°50'43"E 91.63 FEET; THENCE S70°09'17"W 125.00 FEET; THENCE N19°50'43"W 119.55 FEET; THENCE N24°04'17"W 167.90 FEET; THENCE N36°43'38"W 63.80 FEET; THENCE N52°05'38"W 103.59 FEET TO THE POINT OF BEGINNING, CONTAINING 1.66 ACRES, BEING SUBJECT TO ALL EASEMENTS EXISTING, SHOWN, APPARENT OR OF RECORD, ALL ACCORDING TO THIS PLAT.

AREA 3: BEGINNING AT THE SOUTHWEST CORNER OF COULTER PINE STREET AS DEDICATED ON PONDEROSA HEIGHTS, PHASE 1; THENCE S89°18'55"W 7.88 FEET; THENCE S88°17'17"W 76.41 FEET; THENCE S89°18'25"W 317.46 FEET; THENCE S89°18'30"W 550.92 FEET; THENCE N00°00'00"E 167.00 FEET; THENCE N90°00'00"E 97.46 FEET; THENCE 57.84 FEET ALONG THE ARC OF A NON TANGENT CURVE TO THE RIGHT WITH THE RADIUS POINT BEARING S73°50'51"E 51.00 FEET; THENCE N81°07'45"E 374.77 FEET; THENCE 75.54 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT WITH THE RADIUS POINT BEARING S08°52'15"E 530.00 FEET; THENCE N89°17'45"E 158.69 FEET; THENCE 60.03 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT WITH THE RADIUS POINT BEARING N00°42'15"W 70.00 FEET; THENCE N40°09'24"E 58.52 FEET; THENCE 17.28 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT WITH THE RADIUS POINT BEARING N49°50'36"W 11.00 FEET; THENCE S49°50'36"E 76.27 FEET; THENCE 107.89 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT WITH THE RADIUS POINT BEARING S40°09'24"W 170.00 FEET; THENCE S00°00'00"E 51.79 FEET TO THE POINT OF BEGINNING, CONTAINING 5.24 ACRES, BEING SUBJECT TO ALL EASEMENTS EXISTING, SHOWN, APPARENT OR OF RECORD, ALL ACCORDING TO THIS PLAT.

FURTHER, THAT THE ABOVE DESCRIBED TRACT IS TO BE KNOWN AND DESIGNATED AS "PONDEROSA HEIGHTS, PHASE 5-2A", AND THAT ALL LANDS INCLUDED IN THE STREETS AS SHOWN ON THIS PLAT ARE HEREBY DEDICATED, GRANTED AND DONATED TO THE USE OF THE PUBLIC FOREVER, AND THAT THE LANDS INCLUDED IN COMMON AREA B AS SHOWN HEREON IS DEDICATED, GRANTED AND DONATED TO THE PONDEROSA HEIGHTS HOMEOWNERS ASSOCIATION. FURTHER, THAT THIS PLAT CONFORMS TO THE PRELIMINARY PLAT PREVIOUSLY REVIEWED AND APPROVED BY THE GOVERNING BODY, AND ALL OR PART OF THE REQUIRED PUBLIC IMPROVEMENTS HAVE BEEN INSTALLED AND/OR A SUBDIVISION IMPROVEMENTS AGREEMENT EXISTS WHICH IS ACCEPTABLE TO THE COUNTY ATTORNEY AND GOVERNING BODY SECURING THE FUTURE CONSTRUCTION OF THE PUBLIC IMPROVEMENTS. FURTHER, THAT THIS SURVEY IS EXEMPT FROM SANITARY REVIEW PURSUANT TO SECTION 76-4-125 (2) (d) M.C.A., TO WIT: DIVISIONS LOCATED WITHIN JURISDICTIONAL AREAS THAT HAVE ADOPTED GROWTH POLICIES PURSUANT TO CHAPTER 1 OR WITHIN FIRST-CLASS OR SECOND-CLASS MUNICIPALITIES FOR WHICH THE GOVERNING BODY CERTIFIES, PURSUANT TO 76-4-127, THAT ADEQUATE STORM WATER DRAINAGE AND ADEQUATE MUNICIPAL FACILITIES WILL BE PROVIDED.

THE UNDERSIGNED HEREBY GRANTS UNTO EACH AND EVERY PERSON, FIRM, OR CORPORATION, WHETHER PUBLIC OR PRIVATE, PROVIDING OR OFFERING TO PROVIDE TELEPHONE, TELEGRAPH, ELECTRIC POWER, GAS, CABLE TELEVISION, WATER, OR SEWER SERVICE TO THE PUBLIC, THE RIGHT TO THE JOINT USE OF AN EASEMENT FOR THE CONSTRUCTION, MAINTENANCE, REPAIR AND REMOVAL OF THEIR LINES AND OTHER FACILITIES, IN, OVER, UNDER, AND ACROSS EACH AREA DESIGNATED AS "UTILITY EASEMENT" TO HAVE AND TO HOLD FOREVER.

PONDEROSA DEVELOPMENT, INC.
BY: *Paul O. Rossignol*
PAUL O. ROSSIGNOL
IT'S: AUTHORIZED AGENT

ACKNOWLEDGMENT:
STATE OF MONTANA)
COUNTY OF MISSOULA)

ON THIS 25 DAY OF July, 2007, BEFORE ME THE UNDERSIGNED, A NOTARY PUBLIC FOR THE STATE OF MONTANA, PERSONALLY APPEARED PAUL O. ROSSIGNOL, KNOWN TO ME TO BE THE AUTHORIZED AGENT OF THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SUCH CORPORATION EXECUTED THE SAME.

SS (SIGNATURE) *Tim Wolfe*
NOTARY PUBLIC FOR THE STATE OF MONTANA
(PRINTED NAME OF NOTARY) Tim Wolfe
RESIDING AT Missoula, MT
MY COMMISSION EXPIRES 4/20/2010

TIM A. WOLFE NOTARIAL SEAL STATE OF MONTANA

GRANT OF EASEMENT:
I, PAUL O. ROSSIGNOL, BEING THE OWNER OF TRACT 1A OF CERTIFICATE OF SURVEY No. 5774, DO HEREBY GRANT UNTO LOT 1 AS SHOWN ON THIS PLAT AND TRACT 2 OF CERTIFICATE OF SURVEY No. 4968, A 60 FOOT WIDE PRIVATE ACCESS AND UTILITY EASEMENT ALONG THE SOUTHEASTERLY LINE OF SAID TRACT 1A AS SHOWN ON THIS PLAT.

SS *Paul O. Rossignol*
PAUL O. ROSSIGNOL

ACKNOWLEDGMENT:
STATE OF MONTANA)
COUNTY OF MISSOULA)

ON THIS 25 DAY OF July, 2007, BEFORE ME THE UNDERSIGNED, A NOTARY PUBLIC FOR THE STATE OF MONTANA, PERSONALLY APPEARED PAUL O. ROSSIGNOL, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

SS (SIGNATURE) *Tim Wolfe*
NOTARY PUBLIC FOR THE STATE OF MONTANA
(PRINTED NAME OF NOTARY) Tim Wolfe
RESIDING AT Missoula, MT
MY COMMISSION EXPIRES 4/20/2010

TIM A. WOLFE NOTARIAL SEAL STATE OF MONTANA

SURVEYOR'S CERTIFICATION:

MONTANA EDWARD J. FLEMING 9747 LS LICENSED PROFESSIONAL LAND SURVEYOR

SS *[signature]* DATE 4/20/07
EDWARD J. FLEMING
MONTANA REGISTRATION No. 9747LS

UNLESS SIGNED, SEALED AND DATED, THIS IS A PRELIMINARY OR UNOFFICIAL DOCUMENT, AND CANNOT BE RELIED UPON IN WHOLE OR IN PART.

EXAMINED AND APPROVED:

CERTIFICATE OF EXAMINING LAND SURVEYOR:
I, *Steven G. Smith for Charles L. Wright*, EXAMINING LAND SURVEYOR OF MISSOULA COUNTY, MONTANA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS PLAT OF "PONDEROSA HEIGHTS, PHASE 5-2A" AND FIND THAT IT CONFORMS TO SURVEYING AND ROADWAY REQUIREMENTS OF SECTION 76-3-611 (2) (a), M.C.A., AND STATE AND LOCAL REGULATIONS ENACTED PURSUANT THERETO.

DATED THIS 19th DAY OF July, 2007

SS *[signature]*
MISSOULA COUNTY - DEPARTMENT OF PUBLIC WORKS

CERTIFICATE OF COUNTY ATTORNEY:
I, *Fred Van Valkenburg*, COUNTY ATTORNEY FOR MISSOULA COUNTY, MONTANA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE CERTIFICATE OF TITLE OF THIS PARCEL, "PONDEROSA HEIGHTS, PHASE 5-2A", AND I FIND THAT IT CONFORMS TO THE REQUIREMENTS OF SECTION 76-3-612 (2), M.C.A., AND STATE AND LOCAL REGULATIONS ENACTED PURSUANT THERETO.

DATED THIS 30th DAY OF July, 2007

SS *Fred Van Valkenburg*
MISSOULA COUNTY ATTORNEY

MISSOULA CITY-COUNTY HEALTH DEPT.
DATED THIS 23rd DAY OF July, 2007

SS *[signature]*
MISSOULA CITY-COUNTY HEALTH DEPT.

MISSOULA OFFICE OF PLANNING AND GRANTS
DATED THIS 21st DAY OF August, 2007

SS *[signature]*
MISSOULA OFFICE OF PLANNING AND GRANTS

CERTIFICATE OF COUNTY COMMISSIONERS:
WE THE COUNTY COMMISSIONERS FOR MISSOULA COUNTY, MONTANA, DO HEREBY APPROVE THIS PLAT IN THE PUBLIC INTEREST SUBJECT TO THE FOLLOWING CONDITIONS:

1) ACCEPTANCE OF A DEED FOR A LOT WITHIN THIS SUBDIVISION SHALL CONSTITUTE A WAIVER OF THE RIGHT TO PROTEST A FUTURE RSID/SID FOR A FUTURE PARKS MAINTENANCE DISTRICT IN LOLO.

DATED THIS 21st DAY OF August, 2007

SS *Barbara Evans*
CHAIRMAN

SS *Jean Curtiss*
COMMISSIONER

SS *Bill Carey*
COMMISSIONER

ATTEST:
DATED THIS 21st DAY OF August, 2007

VICKIE M. ZEIER, Missoula County Clerk
BY *[signature]* DEPUTY

SS
MISSOULA COUNTY CLERK AND RECORDER

SAC - Bk 804 Pg 238
OR - Bk 804 Pg 239
CTP - Bk 804 Pg 240
CTP - Bk 804 Pg 241
AFF - Bk 804 Pg 242

PRIVATE ACCESS STATEMENT:
THE PURCHASER AND/OR OWNER OF LOTS WITHIN THIS SUBDIVISION UNDERSTANDS AND AGREES THAT PRIVATE ACCESS CONSTRUCTION, MAINTENANCE, AND SNOW REMOVAL SHALL BE THE OBLIGATION OF THE OWNER OR PROPERTY OWNERS' ASSOCIATION AND THAT THE COUNTY OF MISSOULA IS IN NO WAY OBLIGATED TO PERFORM SUCH MAINTENANCE OR UPKEEP UNTIL THE ROADS ARE BROUGHT UP TO STANDARDS AND ACCEPTED BY THE COUNTY OF MISSOULA FOR MAINTENANCE.

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PLAT00828 Page: 1 of 1 08/21/2007 01:44P Missoula County Vickie M Zeier PL Bk-32 Pg-32

200752141

43
SDS

After Recording Return To:
Chris Johnson
Worden Thane, PC
P.O. Box 4747
Missoula, MT 59806

TOWN000042 Pages:43 Fee:$301.00
09/07/2017 02:47:00 PM Townhome
Tyler R. Gernant, Missoula County Clerk & Recorder

DECLARATION OF TOWNHOMES, COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE PINYON WAY TOWNHOMES

THIS DECLARATION OF TOWNHOMES is made on the 22nd day of August, 2017, by Ponderosa Heights Apartments LLC, a Montana limited liability company, of 7105 Hwy 12 West, Lolo, MT 59847, and provides as follows:

RECITALS

1. Ponderosa Heights Apartments LLC ('Declarant') is the owner of Real Property located in Missoula County, Montana, which is described as follows:

   Lot 109 of Ponderosa Heights, Phase 2A, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof.

2. To be located upon the Real Property are four Townhomes, consisting of two buildings with each building being part of two separate Townhomes with a shared common wall, designated as Townhome Unit 1, Townhome Unit 2, Townhome Unit 3, and Townhome Unit 4, and which Townhome Units are herein declared, and shall hereinafter be conveyed as Townhomes, and which Townhomes are pending completion of construction of the dwellings that will constitute part of the Townhome Units.

3. Additionally, Declarant wishes to place restrictions, covenants, conditions and easements upon the Real Property for the use and benefit of the Real Property, itself, and all future owners of all or any part of the Real Property, which restrictions, covenants, conditions and easements shall run with the Real Property and shall be binding upon all parties having or requiring any right title or interest in any part of the Real Property and shall inure to the benefit of and bind each successor in interest to the owner thereof.

4. NOW, THEREFORE, the Declarant provides as follows:

DECLARATION

1. **DEFINITIONS**

a. Architectural Control Committee. "Architectural Control Committee" shall mean and refer to a committee of the Association, as more specifically described in Section 7 of this Declaration.

b. Association. "Association" shall mean and refer to the Pinyon Way Townhomes Owners Association, Inc. to be incorporated by Declarant as a Montana non-profit corporation, as described in Section 8 of this Declaration.

c. Building. "Building" means the two buildings to be constructed on the Real Property that constitute, in part, the four townhomes.

d. Bylaws. "By-Laws" means the By-Laws of the Association.

e. Common Elements. "Common Elements" shall mean such common features, common areas, improvements, and shared utilities as described more particularly herein, and as may be shown on the site plan submitted with the Architect, Surveyor, or Engineer's Statement recorded in conjunction with this Declaration. "Limited Common Elements" are Common Elements whose use is limited to less than all of the Units.

f. Declarant. "Declarant" shall mean and refer to Ponderosa Heights Apartments LLC or any person or entity that may be assigned or transferred the development rights hereunder. A grant of a deed to a single Townhome shall not be deemed a transfer of any development rights retained herein.

g. Declaration. "Declaration" shall refer to this Declaration of Townhomes, Covenants, Conditions and Restrictions for the Pinyon Way Townhomes.

h. Member. "Member" shall mean and refer to every person or entity who is a Member of the Association as described in Section 8 of this Declaration.

i. Owner. "Owner" shall mean and refer to every person or entity who is a record Owner of a fee, or undivided fee interest in any Townhome that is subject to this Declaration.

j. Real Property. "Real Property" shall mean and refer to that certain Real Property as

described or referred to in Section 1 of the Recitals, above and the improvements thereon.

k. Townhome Unit. "Townhome Unit" or "Unit" shall mean and refer to an individual Townhome as illustrated on the site plan recorded with this Declaration and as more specifically described in Section 3(b) of this Declaration.

l. Transition Date. "Transition Date" shall be the date upon which the authority and responsibility to administer and manage the Association and the townhomes, subject to this Declaration and By-Laws, passes to the Association. The Transition Date will be on or before 30 days following the sale of the 3rd unit of the 4 total townhomes. Should the number of townhomes change, according to procedures established herein and under state law, the number shall be the sale of the townhome constituting the transfer of 75% or more total townhome units.

2. DECLARATION

a. Declaration. Declarant hereby submits the Real Property and its improvements to the form of townhome ownership and use provided by Title 70, Chapter 23, of the Montana Code Annotated (MCA), hereinafter referred to as the "Montana Unit Ownership Act" and pursuant to MCA §76-3-203, and further pursuant to municipal facilities subdivision review in accord with MCA §76-4-125(2)(d). Declarant further declares that all of the Real Property described herein and all present and future Owners of Townhome Units shall be subject to, and shall comply with the provisions of this Declaration, the By-Laws, and the rules and regulations adopted by the Association, as these instruments may be amended from time to time. The valid execution of a purchase contract by a buyer or the acceptance of a deed thereto shall constitute acceptance of the provisions of such instruments by such Owner. All Owners shall be responsible for insuring compliance by their tenants, family members, other occupants of their Townhome Unit and their guests.

b. Conveyances Subject to Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration, along with the Bylaws of the Association and its Rules, shall be deemed to be covenants appurtenant, running with the Real Property, and shall at all times inure to the benefit of and be binding on any person having at any time any interest or estate in the Real Property, and such person or entities, respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, or other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, benefits and privileges which are granted,

created, served or declared herein as though fully and completely set forth in their entirety in any such document.

c. Submission to Unit Ownership. One of the purposes of this Declaration is to submit the Real Property under the Montana Unit Ownership Act, the definition of terms in this Declaration and the By-Laws of the Association shall be those definitions used in the Montana Unit Ownership Act, except as otherwise provided herein. The Real Property included within the project shall be named "Pinyon Way Townhomes."

3. DESCRIPTION OF PROJECT

a. Description of Project. The project consists of four Townhome Units and the real property that is a part of each Unit, designated as Townhome Unit 1, Townhome Unit 2, Townhome Unit 3, and Townhome Unit 4, containing two, two-story Buildings, with two Townhomes in each Building sharing a common wall, together with attached garages located in and being a part of each Building. Units 1 and 2 have three bedrooms and Units 3 and 4 have two bedrooms. The location of the Buildings and each Townhome Unit is shown on the floor plans and site plan attached to the Architect, Surveyor, or Engineer's Statement, which statement is recorded in conjunction with this Declaration pursuant to Montana Code Annotated §70-23-306. The Buildings are two levels, with a main ground level floor and upper floor, and are of wood construction and framing, with fiber or composite siding, concrete foundation, and asphalt shingle roof. Interior walls are of sheetrock. Declarant proposes to convey the Townhome Units by Warranty Deeds pursuant to which the grantees shall have the exclusive right to occupy the Townhome Unit and its affiliated real property, and the non-exclusive right to use and enjoy any Common Element as specified in the Declaration, subject to the limitations, covenants, conditions, restrictions and easements set forth herein. Declarant intends to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration, remodeling and improvement of the Townhome Units and other expenses pertaining thereto, and hereby declares that the Townhome Units are and shall be held, conveyed, hypothecated, encumbered, occupied and improved subject to the limitations, covenants, conditions, restrictions and easements set out in this Declaration, all of which are declared to be in furtherance of a plan established for the purpose of enhancing the value, desirability and enjoyment of the Real Property and the Townhome Units therein to be conveyed. All such limitations, covenants, conditions, restrictions and easements are intended to run with the land, to-wit, each Townhome Unit covered by the Declaration, and each Owner and each Owner's successors and assigns are and shall be bound by the Declaration.

b. Townhome Unit. Each Townhome Unit consists of some or all of the elements and real property depicted in the plans and specifications for each as more particularly

depicted and designated on any floor and site plans recorded concurrent with this Declaration and is described as the dwelling space, bounded and contained within the Unit, and including the perimeter or exterior walls of each Unit, and including the portion of the Real Property on which each Unit lies, and including common walls through and including the framing of such common walls (being double framed), roof and subflooring, and inclusive of attached garages, the finished floors, ceiling, walls, windows and doors, and decks, which are attached to and/or incorporated in each particular Townhome Unit inclusive of fixtures and improvements, decks, driveways, walkways, and other features as may lie within the designated Townhome area. Each Townhome Unit includes the easement or easement right in any utility lines and pipes which serve only that Townhome Unit but which may cross or exist on a portion of another Townhome Unit.

c. Common Elements. Appurtenant to each Townhome Unit, but not a part thereof is an undivided interest in the general common area or element as depicted on the site plans, and an undivided interest in the interior or structural portion of the shared common walls of Units 1 and 2, and Units 3 and 4, that divide the Units.

d. Appurtenances. The Townhome Units hereby established include or have appurtenant thereto an undivided interest, shared with its adjacent Townhome, in the structural component (versus the finished surface that is a part of each Unit) of its common wall, together with such easements as are specified herein.

4. PROPERTY RIGHTS AND OBLIGATIONS

a. Easements. There shall exist, and the same is hereby declared, created, and granted, for the benefit of each Townhome Unit, along with the Association, its agents and employees, and as a burden on the other Townhome Units the following easements, provided such easements shall not be considered or determined to be encumbrances on the Townhome Units for purposes of marketability of title.

i. Common Wall and Encroachment Easement. The Owner of each Townhome Unit shall and does have a perpetual easement, and the same is hereby declared, created and granted, for maintenance and replacement of the common wall shared with the adjoining Townhome. In the event a Townhome, or any part thereof, shall at this time or a subsequent time unintentionally encroach (whether due to construction, settling, shifting or otherwise) upon another Townhome Unit, the Owner of that encroaching Townhome shall and does have a perpetual easement for such encroachment and for maintenance of the same, upon the Townhome Unit upon which it encroaches.

ii. Maintenance Easement. The Owner of each Townhome Unit shall and does have a perpetual easement, and the same is hereby declared, created and granted, for maintenance, repair and replacement of his Townhome Unit, and the utilities that serve such Townhome, over, under, across and upon the other Townhome Units, including within the adjacent Townhome, as reasonably needed for such maintenance, repair and replacement. For the purposes of the maintenance, repair and replacement for which the Association may be responsible, the Association, its agents, employees and subcontractors, shall have full right to use such easements as necessary to carry out the Association's responsibility.

iii. Utilities and Drainage Facilities. Easements for installation and maintenance of utilities, and drainage facilities, as reserved and shown on the exhibits attached to the Architect, Survey, or Engineer's Statement recorded in conjunction with this Declaration, including, but not limited to, easements for: water lines from service feeds coming off Pinyon Way to the respective Units; electricity and communication/cable lines; natural gas lines; and sewer lines from the service feeds coming off Pinyon Way. Additionally, Declarant hereby declares, creates and grants a blanket easement across the Real Property for installation and maintenance of utilities and drainage facilities to the Association and Owners subject to the Declarant's or Association's prior consent to location and configuration. The Declarant and the Association retain the right to grant such additional easements for installation and maintenance of utilities and drainage facilities as Declarant or Association deem necessary to secure such service to the Units. In addition to the Declarant, any Owner may grant easement to a utility provider so long as such utility only crosses that Owner's Unit. No building of any kind shall be erected, placed, or permitted to remain on such easements.

iv. Easements through the Townhome Units for maintenance, repair and replacement of the Common Elements. Use of these easements, however, for access to the interior of individual dwellings shall be limited to access necessary to repair and maintenance of common walls or other shared or common features between units, with such access further limited to reasonable hours and upon notice to the Owner of the Townhome Unit, except that access may be had at any time in case of emergency.

v. Every portion of a Townhome Unit which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of the other Townhome Units that constitute the building.

vi. Easement through the general Common Areas for ingress and egress for all persons making use of such Common Areas in accordance with the terms of this Declaration, and; easement and unrestricted right of access, ingress and egress across Common Areas for the use and benefit of Unit 3 and Unit 4, as depicted on the attached site plan.

vii. Easements through, over or under the Townhome Units for all facilities for the furnishing of utility services within the buildings, which facilities shall include but not be limited to conduits, pipes, ducts, plumbing and wiring; provided that the easements for such facilities through a Townhome Unit shall be substantially in accordance with the plans of the building and as such facilities may exist as of the date of this Declaration or as may be built.

viii. Easement for the use and benefit of the adjacent Lots 107 and 108 of Ponderosa Heights, Phase 2A, to use the Parking and Access areas within the General Common Element area as depicted on the attached site plans. The four parking areas located and depicted in the Parking and Access areas are for the exclusive use and benefit of Lots 107 and 108, and their owners, tenants, guests, and assigns, and may not be used by the Owners of Pinyon Way Townhomes Units, nor their tenants, guests, and assigns. General ingress and egress is also created and granted herein for the use and benefit of Lot 108 and Lot 107 of Ponderosa Heights, Phase 2A, over and across the driveways depicted on the site plan and designated and Parking and Access area. No parking is such designated area is allowed, except in the depicted four parking spaces.

b. Delegation of Use. Any Owner may delegate his right of enjoyment to the Townhome Unit to his guests or tenants, who reside in such Owner's Townhome Unit. All such persons shall be subject to the rules concerning use as the Association may adopt. Each Owner shall be responsible to assure his guests and tenants abide by the terms of this Declaration, the Articles of Incorporation of the Association, its By-Laws and any rules which it might adopt.

5. **LEASE OF A TOWNHOME UNIT.**

Any Owner shall have the right to lease his Townhome Unit upon such terms and conditions as the Owner may deem advisable subject to this Section. All leases shall be in writing and shall have an initial term of at least 30 days, and shall provide that the lease is subject to the terms of this Declaration, the Articles of Incorporation of the Association, its By-Laws and any rules which it might adopt. All such leases shall provide that any failure of a lessee to comply with the terms of this Declaration, the Articles of Incorporation of the Association or its By-Laws or any rules adopted by the Association shall be a default under the lease or rental agreement. If any lease does not contain the foregoing provisions, such provisions

shall nevertheless be deemed to be a part of the lease and binding upon the Owner and the lessee by reason of their being stated in this Declaration. Townhome Unit owners should provide lessees copies of relevant documents as part of their lease agreement, and shall upon demand by the Association provide a copy of such lease to the Association or its designated agent. If any lessee or occupant of a Townhome Unit violates or permits the violation by his guests and invitees of any provisions hereof or of the Bylaws or the rules and regulations of the Association, and the Board determines that such violations have been repeated and that a prior written notice to cease has been given, the Board may give notice to the lessee or occupant of the Unit and the Owner thereof to forthwith cease such violations, and may then take such action and seek such remedies as are provided for in this Declaration. The Association, by exercise of this provision, shall have no liability to the tenant for conduct of the Owner which may violate relevant landlord-tenant law. The Association shall have a lien against the Owner's Unit for any costs, including reasonable attorney fees, incurred by it in connection with enforcement of provisions violated by tenants of an Owner, which may be collected and foreclosed by the Association in the same manner as Assessments are collected and foreclosed herein. Any failure of a lessor or lessee to comply with the terms of this Declaration, the Articles of Incorporation of the Association or its By-Laws or rules adopted by the Association shall be a default enforceable by the Association against such lessee and the Owner of such Townhome Unit. In the alternative to action by the Association, an individual Owner may bring suit to enforce such provisions. Each Owner covenants and agrees that in the event he or she leases their Townhome Unit to a tenant or tenants, or allows individuals other than him or herself to reside therein that they shall continue to be responsible for all the acts and omissions of such persons.

6. USE RESTRICTIONS

a. Property Use. The use for which each Townhome Unit is intended is that of a residential townhome. All uses are subject to all applicable zoning and other applicable restrictions imposed by Missoula County or other governmental entity. No business use, except as provided for herein by Declarant, shall be maintained in any Unit, except for those type of home businesses or commercial activities which may be carried out from within the Townhome Unit, and do not involve customers, vendors, or suppliers coming to the residence, except on a highly infrequent or irregular basis. Regardless of this provision, the use of each Unit shall remain primarily residential. Property use may be further regulated or restricted by the covenants, conditions, and restrictions for the plat of Ponderosa Heights, Phase 2A. In any conflict between the covenants, conditions, and restrictions between those contained herein and for the plat of Ponderosa Heights, Phase 2A, the more restrictive provision shall control.

b. Declarant's Use. Notwithstanding any provision herein contained to the contrary, during the period of sale it shall be expressly permissible for the Declarant to

maintain upon the Real Property such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the sale of the Townhome Units, including but not limited to a business office, storage area, construction yard and structures, signs, model Townhome Units, sales offices and leases of any term. Declarant, its agents and prospective purchasers shall also have the right of ingress, egress and parking in and through and the right to use and enjoy portions of the real property reasonably necessary to effectuate the development and construction contemplated herein, without the permission of any Owner or the Association being required.

c. General Prohibitions and Rules. All use and occupancy of the Townhome Units and any Common Area shall be subject to and governed by the rules as adopted by the Association, which rules shall not be inconsistent with the terms of this Declaration. Every Owner, his guests, employees, invitees, tenants and licensees shall adhere strictly to the rules as adopted by the Association pursuant to this Section or otherwise under this Declaration.

d. Alteration. The Townhome Units were designed and constructed in a uniform and common theme, which is intended to stay uniform throughout all Units. Therefore, no Owner shall alter any of the Common Area or any structure located within his Townhome Unit, without the prior written consent of the Association's Architectural Control Committee, or in the alternative by the Board of Directors. Nothing shall be done by any Owner within the Real Property which would impair the structural integrity of any improvement located upon the Real Property. No Owner shall make any change, modification, alteration or addition to the design, structure or color scheme of any building's exterior without first obtaining the prior written consent of the Architectural Control Committee or in the alternative the Board of Directors. General landscaping and planting within a Townhome Unit that does not materially effect the existing structures and their views or appearance, or otherwise impair easements or other rights of other Owners established herein is left to the discretion of the individual Townhome Unit Owner. Flagpoles or other structures or improvements may not be installed on a Unit without written consent of the Architectural Control Committee, or in the alternative the Board of Directors of the Association. No antenna shall be permitted on the exterior of a Unit except small satellite dishes or microwave internet dishes no larger than one meter in diameter, for which the installing Owner shall be responsible for maintenance. Such dishes shall generally be located where the Units are pre-wired for such service. Upon sale of the Unit and/or the removal of the dish, the Owner shall be responsible for repairing or restoring the point of attachment to its original condition.

e. Imperiling of Insurance. Nothing shall be done within the Real Property which might result in an increase in the premiums for or which might cause cancellation of

insurance obtained for any portion of the Real Property, except with the prior written consent of the Association.

f. Violations of Law. Nothing shall be done within the Real Property which would be in violation of any statute, rule, ordinance, regulation, permit or validly imposed requirement of any governmental body, specifically including but not limited to federal, state or local laws regarding the use and disposal of toxic materials and hazardous wastes.

g. General Common Element/Area. As depicted on the site plan attached to the Architect, Engineer, Surveyor's Statement, a significant portion of the common area lies within a no-build zone. A portion of Unit 4 also lies within that no-build zone, and as such serves as a limitation on improvements within that portion of Unit 4. No recreation activity or other use may be made of the slope that lies on the southern end of the common area that may compromise the slope or otherwise cause erosion. Foot and wheeled vehicle access on the slope is prohibited. Except as provided for above relative to the Declarant, and except for designated parking and driveways, no vehicles, equipment, personal property, or yard or lawn waste may be placed or stored on the common area.

h. Nuisances. No noxious or offensive activity shall be carried on upon the Real Property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Owners, their families, tenants or agents. No activity shall be conducted on any part of the Real Property which is or might be unsafe or hazardous to any person or the Real Property.

i. Signs. No advertising signs, billboards, or unsightly objects shall be erected, placed, or permitted to remain on any part of the Real Property, excepting signs not to exceed eight square feet may be used to advertise Units for sale or for rent. Provided, that signs identifying the Real Property and such signs as might be required by law (e.g., signs indicating handicapped parking) shall be permitted. Also permitted are signs pertaining to any political campaign or ballot issue, so long as the same are on an Owner's Townhome Unit and comport with the above size limitation, but only for a period of 30 days prior to the election to which the sign pertains. For a period of five years from the date of this Declaration, the Declarant shall be permitted to place signs, without limitation of size or otherwise, upon the Real Property to promote the development of the project.

j. Pets and Fencing. No more than two domestic animals or pets may be kept at each unit and no animals may be bred commercially. This limitation does not apply to indoor aquariums or terrariums. The presence and use of service animals for the handicapped or disabled shall be permitted upon the Real Property and within the

Townhome Units. All owners of permitted pets shall be responsible for keeping their pet contained and for clean up of all waste. Such pets shall not be allowed to be at large on the premises or common areas, but may be permitted within fenced portions of a particular Unit. Fencing as exists on the project as installed by the Declarant shall be maintained in the same location and configuration as installed, with changes to that fencing not permitted absent the written consent of the Architectural Control Committee or alternatively the Board of Directors. In no event may fencing exceed six feet in height. No outdoor kennels may be installed on any Unit, nor may any pet be allowed to remain outdoors overnight. No animal kept outdoors shall be allowed to become a nuisance or a frequent source of noise. All pet wastes shall be promptly picked up by the pet's owner, and not allowed to become a nuisance or source of odor. No pet is allowed to be at large unless under the immediate control of its owner, or contained within a fenced area on that Owner's Unit.

k. Unsightly Uses. Refuse piles or other unsightly objects and materials shall not be placed or remain upon the Property. This provision does not preclude maintained and tidy composting. The Association shall have the right to enter upon any Townhome Unit, to remove such refuse piles or other unsightly objects and materials at the expense of the Owner causing such unsightly use, and upon due notice to the Owner. Such entry shall not be deemed a trespass and incurred expenses may be collected and foreclosed by the Association in the same manner as Assessments are collected and foreclosed as provided for herein.

l. Parking/Vehicles. No vehicle of any type shall be parked except on and within that Owner's Unit, and in the garage or driveway/parking apron in front of the garage, or otherwise legally on the adjacent streets. The four parking stalls on the common area are not for the use and benefit of the Townhome Units but is reserved for use by an adjacent property. No non-functioning or non-licensed vehicles shall be parked on the Property. No boats, trailers, trailered vehicles or watercraft, recreational vehicles, or off-road vehicles may be parked outside a garage, except on an infrequent basis, and then not to exceed 5 consecutive days. There shall be no assembling, repairing or disassembling of vehicles anywhere other than inside a garage, or other maintenance of vehicles outside, other than in event of an emergency, and then not to exceed 48 hours. This provision is not intended to preclude the entry of construction, maintenance, delivery, moving, or other such service vehicles while they are being utilized in connection with services to a Townhome Unit. Motorcycles and ATVs shall be parked and treated as other vehicles herein. Bicycles may be parked at any provided parking and locking structure, and may not be locked to the common feature such as power poles, boundary fencing, support beams, utility lines, lighting fixtures, etc.

m. Construction Liens. No labor performed or materials furnished with the consent or

at the request of an Owner, his agent, contractor or subcontractor shall create any right to file a construction lien against the Townhome Unit of any other Owner, who does not request or consent to the same, or against any interests in any Common Area. Each contracting or consenting Owner shall indemnify, defend and hold harmless the Association and each of the other Owners from and against liability arising from the claim of any lien or against the Townhome Units for labor performed or materials furnished at the request of the contracting or consenting Owner. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the contracting or consenting Owner the amount necessary to discharge any such lien and all costs incidental thereto including attorney's fees and expenses. Said expenses may be added to such Owners regular assessments.

n. Garbage. Each Owner shall contract and pay for individual garbage removal services, and provide their own sealed garbage containers for collection of garbage, as may be required by the service provider. Such garbage containers shall be kept inside and out of view, except on garbage collection days.

o. Violations. In the event of violation of any prohibitions or restrictions contained in the Declaration, by any Owner, his family, guests or tenants, such violation shall obligate said Owner to reimburse the Association, or an individual Owner, for the cost and expense expended by it in order to cure the violation, enforce this Declaration and/or restore the property to its original state together with a displacement fee, in such amount as established by the Association or as may be determined by a court of law, in the event such violation results in a delayed access for another Owner. Such charges as incurred by the Association shall be treated as assessments pursuant to Section 9 against such Owner and his ownership interest.

7. ARCHITECTURAL CONTROL

a. Appointment of Architectural Control Committee. The Association may establish, either permanently or on an ad-hoc basis, an Architectural Control Committee to serve the functions as described in this Article. Members of the Architectural Control Committee shall be appointed and serve as set forth in the By-Laws and rules of the Association, except that all members of the Architectural Control Committee shall be appointed by the Declarant, until the Transition Date or such time as the Declarant opts to hand over this responsibility pursuant to said By-Laws. Any function herein assigned to the Architectural Control Committee may be carried out by the Directors, or in the alternative, by unanimous written consent of all Owners.

b. Restrictions. No alteration, as described in Section 6(d), to a Townhome Unit or common wall or Common Area, shall be permitted until the plans and specifications showing the nature, kind, shape, height, materials and location of such have been

submitted and approved in writing as to conformity to the provisions of this Declaration and to the quality of workmanship and materials and conformity and harmony of design with the existing Buildings, topography, and finished ground elevation, by the Architectural Control Committee. This provision shall include any outbuildings or storage sheds.

c. Review and Approval. The Owner seeking Architectural Control Committee approval must first submit all plans and specifications as described in Section 6(d) and otherwise requested by the Architectural Control Committee, or in its absence, to the Board of Directors. If the Architectural Control Committee fails to approve or disapprove such design and location within 30 days after all of said plans and specifications have been submitted and received by it for consideration, such approval will be deemed approved. All plans and specifications which must be submitted in writing for approval hereunder shall be submitted to the Architectural Control Committee in care of the Association at its general business address as shall be set forth herein or in the By-Laws of the Association. Members of the Architectural Control Committee shall not be entitled to any compensation for the services they perform. The Architectural Control Committee shall be under no obligation to review any such change to a Townhome Unit, without such signed written consents of each Owner of the respective Townhome Unit to be so modified. This review process shall include and anticipate the possibility of an Owner making modification to a feature wholly contained within that Owner's Townhome Unit; Provided alterations to finished surfaces and other finish work of the interior of the building located on an Owner's Unit shall not require any review and approval, e.g. painting, light fixtures, cabinets, sinks, etc.

8. THE ASSOCIATION

a. General Duties and Responsibilities. Declarant has caused or shall cause the Association to be incorporated as a non-profit corporation and designated the Association to carry out its responsibilities as specified herein. Any purchaser of a Townhome Unit by their acceptance of a deed thereto, shall be deemed to have ratified and approved such designation and management. The Association shall perform the duties required of it hereunder. The Association shall have the following duties, rights and powers:

i. To collect monthly or periodic assessments, equitably prorated as provided by this Declaration, from the Owners and to collect delinquent assessments by suit or otherwise and to collect such other assessments as are herein authorized.

ii. From the funds collected, to provide and pay for the maintenance,

management, insurance, taxes and other such expenses as are enumerated in this Declaration.

iii. To lease, acquire and sell real or personal property in pursuit of the Association's obligations and duties.

iv. To enter into and upon the Townhome Units when necessary with as little inconvenience as possible to the occupants concerned in connection with the duties outlined in these Declarations.

v. To enjoin or seek damages from the Owners for violations of this Declaration, the Articles of Incorporation of the Association, the By-Laws or the rules adopted by the Association pursuant to this Declaration.

vi. To employ office staff, cleaning and maintenance staff, security, workmen and others; to contract for services to be performed, including those of the manager, if deemed desirable; to purchase supplies and equipment; to enter into contracts; and generally to have the powers of a property manager in connection with the matters herein set forth, except that the Association may not encumber or dispose of the fee title of any Owner except to satisfy a lien, award or judgment against such Owner for violation of this Declaration.

vii. The Association shall not enter into any contract or management agreement for the furnishing of services (other than utility services), or for materials or supplies, the term of which contract exceeds one year; and further provided that any contract or management agreement entered into by the Association shall be terminable by the Association for cause upon 30 days written notice and without cause upon 90 days written notice (again excluding those for utilities).

viii. To protect and defend the Real Property from loss or damage by suit or otherwise.

ix. To employ counsel, attorneys, auditors or accountants in connection with the legal or accounting matters of the Association in connection with the audit of its books and records, and, upon proper request, have prepared an audited financial statement.

x. To deposit the funds of the Association which are not necessary for the immediate disbursement into a savings account of a national or state bank earning a standard rate of interest and insured by the Federal Deposit Insurance Corporation.

xi. To file legal protests, formal or informal, with authorities against granting by such authorities of any zoning ordinance or variance as to any property within a reasonable proximity of the Real Property which might affect the value of any Owner's interest in the Real Property.

xii. To establish and maintain reasonable rules and regulations regarding the use of the Common Areas by the Owners, lessees, invitees or guests.

xiii. To coordinate and effect the regular maintenance, repair and replacement of the exteriors of the Buildings. Such exterior maintenance, repair and replacement shall include the maintenance of the siding, trim, roof, and exterior lighting, so as to present an attractive, well kept appearance of the Townhome building exteriors, including but not necessarily limited to regular painting, staining, and replacement of broken fixtures. However, each Owner shall be responsible for regular cleaning of the interior and exterior of windows in their respective dwelling, and of the replacement of light bulbs used in the exterior lighting for their dwelling.

xiv. Pay all real and personal property taxes and assessments which the Association is required to pay, if any, pursuant to the terms and provisions of this Declaration, the Articles of Incorporation of the Association, and its Bylaws, unless separately assessed to the Owners.

xv. Obtain any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations, and insurance which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law.

xvi. Grant such licenses, easements, and rights-of-way for sewer lines, water lines, underground conduits, storm drains, and other public utility purposes as may be necessary and appropriate for the orderly maintenance, preservation, and enjoyment of common utilities or for the preservation of the health, safety, convenience, and welfare of the Owners. The right to grant such licenses, easements, and rights-of-way is hereby expressly reserved to the Association, provided an individual Owner may make such grant of license or easement for utility services that only pertain to his Unit and do not cross or implicate Common Area or the other Owner's Unit.

xvii. To do such other acts as reasonably necessary to carry out the functions of a townhome owners association.

b. Board of Directors. The affairs of the Association shall be managed by its Board of

Directors. Following the initial Board, the Board of Directors shall consist of three (3) individuals, all of whom shall be an owner of a Townhome Unit or the agent or representative of an Owner, and said board shall be elected at each annual meeting by the Members of the Association as provided in the By-Laws. Board Member terms shall be 3 years, with each position staggered so that one Board Member is elected each year. Of the three positions, one shall initially be for one year, one initially for two years, and one initially for three years. Until the Transition Date, or sooner at the Declarant's option, the Board shall consist of any number of persons appointed to that position by the Declarant, with such appointed persons to serve an individual term of not more than one year without being re-appointed.

c. Membership. Every person or entity who is an Owner of any Townhome Unit, including buyers under a contract for deed shall be a Member of the Association. The foregoing is intended to exclude persons or entities who hold an interest merely as security for performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the Townhome Unit, except as may otherwise be provided for at law. Ownership of a Townhome Unit shall be the sole qualification for Membership. The Association if it acquires an interest in a Townhome Unit which would otherwise qualify it for Membership, shall not be considered a Member either for voting or assessment purposes.

d. Voting Rights. Members of the Association shall be entitled to one vote for each Townhome Unit in which they hold an ownership interest which qualifies for Membership. Until the Transition Date, or until such time as it opts out of this provision, the Declarant shall be entitled to three votes for each Townhome Unit in which it holds an interest which qualifies for Membership. When more than one person or entity owns an interest in any Townhome Unit which qualifies for Membership, the vote of such Townhome Unit shall be exercised as such persons or entities determine, but in no event may there be more than one vote per Townhome Unit, except as previously stated for Declarant. In the event multiple owners of a Unit cannot agree on the exercise of their vote, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority of such multiple Owners. If only one of the multiple Owners of a Unit is present at the meeting of the Association, that Owner is entitled to cast any and all votes allocated to that Unit. There is majority agreement if any one of the multiple Owners casts the vote(s) allocated to that Unit without protest being made promptly to the person presiding by any of the other Owners of the Unit. In the case of a protest of the vote cast by one of the multiple Owners, and absent a majority agreement, the vote or votes cast shall be disregarded and the multiple Owners shall lose their right to vote on the matter in question.

e. Consent to Membership. Acceptance of a deed, notice of purchaser's interest or other

documentation evidencing an ownership interest in a Townhome Unit shall be deemed to act as consent to Membership in the Association by the acquiring Owner. The recording of a deed or other document evidencing an ownership interest shall be prima facie evidence of acceptance of that document by the receiver of the interest transferred.

f. Indemnification. The manager, employees , directors and officers of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may become a party or in which they may become involved by reason of having acted as such upon behalf of the Association, provided that this indemnification shall not apply if said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided further than in the event of a settlement, the indemnification herein shall apply only when the Association approves such settlement and reimbursement as being in the best interests of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled.

g. Limitation Upon Liability. Notwithstanding the duty of the Association to maintain and repair parts of the Real Property, the Association shall not be liable for injury or damage other than the normal costs of the maintenance and repair caused by any latent condition of the Real Property, or by the conduct of the Owners or other persons, or by casualties for which insurance pursuant to these Declarations is not required, or for which insurance is not provided by the Association.

9. ASSESSMENTS

a. Assessments. Each Owner, by acceptance of a deed, agrees to pay the Association general, specific and special assessments to be fixed, established and collected from time to time as herein provided. Such assessments, together with interest and the cost of collection in the event of delinquency as allowed in this Article, also shall be the personal obligation of the respective Owner at the time when the assessment was made.

b. Purpose of Assessments. The assessments levied by the Association shall be based upon and used exclusively for cost and expense of the management, maintenance, repair, and replacement of and common element, and for the performance of all other duties and obligations incurred by the Association pursuant to this Declaration and such expenses as the Association, in its opinion, shall determine to be necessary and desirable including the establishment and maintenance of a cash reserve. The Association shall also collect from the Members, according to the Exhibit A percentages, such assessments as may be required to meet assessment obligations for

the Property, as may be assessed by the Ponderosa Heights Homeowners Association, or otherwise as may be due and owing for Lot 109 of Ponderosa Heights, Phase 2A.

c. General Assessments. The assessments levied against the Townhome Units shall be prorated and charged to each Townhome Unit in the percentages as set forth in Exhibit A.

d. Specific Assessments. Throughout this Declaration certain costs and expenses incurred by the Association may be attributed to one or more, but not all Owners, and such specific assessments shall be specifically assessed against the Owner and Townhome Unit incurring such cost and expense. As example, if only a portion of a roof wholly located on a particular Unit needed repair or replacement it would be the responsibility of that Unit Owner to pay for such work through a specific assessment; provided that routine maintenance should, whenever possible, be collectively carried out for all Units to lower costs to members.

e. Special Assessments. In addition to the assessments authorized above, the Association may levy special assessments for the purpose of defraying the costs of any construction, unexpected structural repairs or replacement or capital improvements to any common element, including necessary utilities and fixtures related thereto. If any special assessment exceeds $500.00 per Townhome Unit, per year, the same must have the unanimous assent of all Owners voting, as provided by the By-Laws in person or by proxy at a meeting duly called for such purpose or at the annual meeting. Written notice shall be sent as provided by the By-Laws.

f. Obligation Created. The assessments levied by the Association shall be the personal obligation of the Owners and all sums assessed but unpaid shall constitute a lien against the Townhome Unit on which they are assessed, and any rental income it may earn and may be collected by the Association in the manner provided in the Declaration for the collection of Assessments.

g. Initial Capital Contribution. The Association shall determine when to commence to levy and collect assessments from each Owner. Upon the sale of the third unit, Declarant will establish a working capital fund equal to one (1) months' (estimated) regular assessment for all units, for the operation of the Association.

h. Non-Payment of Assessments.

i. Assessments and fees shall be due and payable on such date and shall become delinquent unless paid on the dates as the Association may establish by rule. All unpaid assessments and fees shall be subject to a late charge for non-payment as may be determined from time to time by the Association. If such

fees or assessments are not paid within thirty days after the due date, they shall bear interest from the date of the delinquency at the rate of ten percent per annum. Failure to make payment within thirty days of the due date thereof shall also cause the full amount of such Owner's estimated annual assessment for the remainder of that year to become due and owing at once, at the option of the Association. In the event it shall become necessary for the Association to collect any delinquent assessments or fees, whether by foreclosure of a lien hereinafter created or otherwise, the delinquent Owner shall pay in addition to the assessment and late charge and interest herein provided, all costs of collection, including actual attorney's fee and costs incurred by the Association in enforcing payment.

ii. The Association is hereby granted a lien against the Owner's Townhome Unit for any payment or payments which the Owner fails to make as required by this Declaration; provided, however, that (a) such lien shall be effective only upon recordation of a notice thereof in the office of the Clerk and Recorder of Missoula County, Montana, and each Owner, by accepting a deed to his Townhome Unit, designates any one of the officers of the Association or its duly appointed manager as agent with full irrevocable power and right to record a notice of said lien in favor of the Association; (b) a lien accruing hereunder shall be foreclosed in the same manner as provided by the laws of the State of Montana for foreclosure construction liens as contained in Montana Title 71, chapter 3, part 5, as now exists or may be hereinafter amended; and (c) such lien shall be subject and subordinate to and shall not affect the right of a holder of any recorded first mortgage now or hereafter placed on the dwelling unit in good faith and for value. The lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Townhome Unit. In the event of a foreclosure, the Owner shall be required to pay reasonable rental to the Association for occupying the same during the period of the foreclosure, and if after the filing of a foreclosure action, the Owner's Townhome Unit is left vacant, the Association may take possession and rent said Unit or apply for appointment of a receiver for the Townhome without notice to the Owner. In addition to the lien herein granted, the Association shall have the right to bring an action at law against any Owner who fails to pay any amounts assessed against his Townhome Unit and obtain judgment for the amount of the assessments due plus costs as herein provided. The Association shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage and encumber or convey the same.

iii. In the event an Owner is in default on any obligation secured by an encumbrance on his Townhome Unit, or which if unpaid may result in a lien,

the Association at its option, may pay the amount on said obligation and file a lien against the Townhome Unit in the manner as provided for herein for unpaid assessments or fees.

iv. Sale or transfer of any interest by an Owner shall not affect or release any lien granted the Association herein.

v. In the case of the conveyance of a Townhome Unit pursuant to foreclosure proceedings by a first mortgage holder or by a deed in lieu of foreclosure to the same, such transfer of title shall extinguish the lien on the Townhome Unit for all unpaid assessments made by the Association becoming due before the date of transfer of title or date of first possession, whichever comes first. The amount remaining unpaid with respect to which the lien is extinguished shall be deemed to be a common expense collectible from all the Owners as such, (inclusive of any owner acquiring at foreclosure or deed in lieu) pursuant to Montana statute, without prejudice to the right of the Association to recover such amount personally from the transferor Owner.

10. MAINTENANCE

a. By Owner. Every Owner of a Townhome Unit shall be responsible for the following:

i. all cleaning, maintenance, upkeep and repair to the interior of each dwelling and garage, and including cleaning and upkeep of any decks and patios associated with each Townhome Unit, and the maintenance and upkeep of fencing around patios, and the routine maintenance and cleaning of the exterior of that Owner's Unit;

ii. all damages to the Owner's Townhome Unit, other Townhome Units, and any common element or utility, resulting from such Owner's intentional or negligent acts or omissions;

iii. all taxes and assessments on his Townhome Unit exclusive of shared utilities, either public or private, and all utility fees or assessments such as electricity, gas, cable tv, and water associated with an individual Unit;

iv. the cost of repair and replacement of doors, windows and glass in the Townhome Units, so as to protect the buildings in general, whether needed as a result of breakage or otherwise; and

v. the cost of repair and periodic maintenance (including painting/staining) of decks, if any, associated with each unit.

vi. To effect regular maintenance, repair and replacement of the landscaping and lawns located in the yard areas of each Townhome. Such maintenance, repair and replacement shall include watering, fertilizing, weeding, mowing, trimming of the lawn and all trees, shrubs, and plants so as to present an attractive, well kept appearance of the yard areas. No Owner shall cause to be removed, damaged, or impaired any plant life in the yard area of his or her Townhome Unit. However, Owners shall be permitted, without prior Architectural Control Committee approval, to plant and maintain free standing (i.e., not attached to a Townhome's exterior) planter boxes and pots, and permitted to plant and maintain flower beds in the Unit yard areas. All such landscaping shall have and continue a positive grade directing surface water away from the structure. All yard decorations and ornaments shall require the approval of the Architectural Control Committee as to the compatibility with the well kept appearance of the Real Property intended by the Declarant.

vii. To effect regular maintenance, repair and replacement of the sidewalks, and driveways, located on and adjoining each Townhome Unit. Such sidewalk and driveway maintenance, repair and replacement shall include cleaning and regular snow removal, so as to present an attractive, well kept appearance of the sidewalks and, driveways. The individual Owners are further responsible for the maintenance, repair and replacement of the structural components of the decks and patios serving each Townhome, and are responsible for keeping their respective decks and patios in a clean and tidy condition and for any snow removal associated with such decks and patios.

viii. Maintain the exterior fencing, if any, along the perimeter of an Owner's Townhome Unit, and any other fencing located on that Unit, excepting any fencing along the common boundary of the Units; PROVIDED, even if such fencing of common Unit boundary is an Association responsibility, the Owners are encouraged to work together to conduct such maintenance without having recourse to assessment for such work by the Association.

b. By Association. The Association shall be responsible for the following:

i. those items as identified in Sections 8. (a.) (xiii);

ii. arrange to be furnished to the each of the Townhome Units, water, sewer, electric, gas, telephone and all other necessary utility services, PROVIDED that individually metered or paid-for services shall be the financial responsibility of individual Unit Owners;

iii. keep the Real Property safe, attractive and desirable;

iv. maintenance of the common areas and parking and access areas located in and on the common areas, inclusive of regular snow removal; provided such maintenance may be subject to a separate easement by and between the Units and the adjacent Lots 108 and Lot 107.

v. make necessary or desirable alterations, improvements and upgrades to the common elements, inclusive shared or common walls and fencing along common Unit boundaries; and

vi. Notwithstanding the above, the Owners of paired Units (i.e. Units 1 and 2, and Units 3 and 4) shall make best efforts to cooperate with one another in the maintenance, repair, and replacement of common elements and building exteriors and when possible effect such work without recourse to having the Association assess for and conduct such work. In avoiding invoking the Association for such routine maintenance and repair, all such maintenance, repair and replacement shall be done upon the prior written consent of both Owners, which consent shall not be unreasonably withheld. If an Owner refuses to consent to such maintenance, repair and/or replacement, which is based upon the recommendation of a professional home inspector, who is a member of the American Society of Home Inspectors or such other nationally recognized accreditation body, then such Owner's refusal shall be deemed unreasonably withheld. In the event such maintenance, repair or replacement is necessary to protect person or property from immediate danger, and an Owner is not immediately available to solicit such consent, such maintenance, repair or replacement may proceed without such Owner's consent or without recourse to Association involvement, but only to the extent needed to remedy the immediate danger presented. The paired Unit Owners shall share the expense of such maintenance, repairs and replacement in proportion of the extent such maintenance, repairs and replacement affect their respective Units. The goal of this provision is to streamline maintenance and repairs of the exterior of the units, common areas and limited common areas, and avoid the necessity of the Association resorting to special or specific assessments.

c. Non-Waiver. Nothing herein shall be construed as a waiver of any right by the Association to recover for any damage or expenses incurred as the result of the willful or negligent action or omission of an Owner or any person.

d. Duty to Inspect and Notify of Defects. Each Owner shall have the duty to make

reasonable inspections of his Townhome Unit from time to time, to determine if said Townhome Unit or contains any obvious defects including improper drainage for which the Association may be liable to repair. In the event of discovery of such a defect, the Owner also shall have the duty to give written notice of the defect to the Association immediately.

e. Duty to Repair. In the event a defect may affect the Townhome Unit of any other Owner or any common element, the party responsible under this Declaration shall repair the same in a workmanlike fashion within a reasonable time following its discovery. Upon the failure of such Owner to so repair defects that are such Owner's responsibility, the Association shall have the duty to enter into and upon the Townhome Unit and effect such repair, the cost of which shall be chargeable to such Owner by assessment or otherwise.

f. Willful or Negligent Acts. In the event that any maintenance, repair or other work is required because of the intentional or negligent action or lack of action of any Owner, his family, guests, tenants, invites, lessees or licensees and such maintenance, repair or other work is not covered or paid for by insurance for the benefit of that Owner or the Association, the Association may perform such work or cause the same to be performed at such Owner's cost and expense and may make an assessment to recover payment thereof against such Owner, provided, except in the event of emergency, such Owner shall be given ten days' prior notice within which to perform the required maintenance, repair or work. Should weather or other circumstances outside the control of the Owner preclude completion of work within the 10 day period, the Owner may instead give written notice to the Association of his intent to complete the work or repair, the reason for the delay, and an estimated time of completion.

11. DAMAGE AND DESTRUCTION OF UNIT

a. Duty to Rebuild. If all or any portion of any Townhome Unit or common element is damaged or destroyed by fire or other casualty, it shall be the duty of the that Owner, to rebuild, repair, or reconstruct said Townhome Unit in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty, except as may be provided in Section 12; in any event a decision to restore or not shall be made within sixty days of the casualty.

b. Time Limitation. The Owner shall be obligated to proceed with all due diligence hereunder and commence reconstruction within three months after the damage occurs and complete reconstruction within six months after damage occurs, unless prevented by causes beyond his reasonable control.

12. DAMAGE OR CONDEMNATION OF COMMON ELEMENT

Damage to Common Element. Damage to or destruction of all or any portion of a common element or common utility shall be handled in the following manner:

a. In the event of damage or destruction to a common element, and if the insurance proceeds of the Owner(s) affected are sufficient to effect total restoration, then such Owner(s) shall cause such common element to be repaired and reconstructed substantially as it previously existed.

b. If the insurance proceeds are within $5,000.00 or less of being sufficient to effect total restoration to the common element, then the Owner(s) shall cause such common element to be repaired and reconstructed substantially as it previously existed, and the difference between the insurance proceeds and the actual cost, if unpaid by the immediately effected Unit Owner(s), shall be levied as a special assessment against each of those Owner(s) on the basis of the ownership interest as set forth in Section 9(e).

c. If the insurance proceeds are insufficient by more than $5,000.00 to effect total restoration to the common element, then by written consent or vote of a majority of the Owners, they shall determine whether

   i prior to damage, and to raise the necessary funds over the insurance proceeds by levying a special assessment against each of the benefitting Owners, on the basis of the owners to rebuild and restore the common element to substantially the same condition as it existed hip interest, as set forth in Section 9(e);

   ii to rebuild and restore the common element in a way which utilizes all available proceeds and an additional amount not to exceed Five Thousand Dollars ($5,000.00) and which is less expensive than rebuilding and restoring the common element to substantially the same manner as it existed prior to being damaged; or

   iii to not rebuild and to distribute the available insurance proceeds equally to the Owners and mortgagees of the Townhome Units as their interests may appear.

d. If reconstruction or restoration has not actually commenced within one year from the date of any damage to which this Section is applicable, then the covenant against partition provided shall terminate and be of no further force and effect .

i. A condemnation award affecting all or a part of the Townhomes which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners shall be distributed among the affected Owners and their respective mortgagees according to the relative values of the Townhome Units, or interest therein, affected by the condemnation as determined by independent appraisal in accordance with a procedure set forth herein. In any condemnation proceeding, the Association shall represent the Unit Owners in all proceedings, negotiations, and settlements relative to the common elements. Any awards or payments for common elements shall be payable to the Association, in Trust, and distributed as identified herein.

ii. In the event of partial or total destruction of a Townhome, and an election by the Owner and the adjacent Owner not to rebuild, insurance proceeds received by the Association on account of the destruction of the common element shall be distributed by the Association among Owners and their respective mortgagees proportionately according to the respective fair market value of the Townhome Units at the time of the destruction as determined by an independent appraisal in accordance with a procedure set forth herein.

iii. In the event of a condemnation award distribution, or a distribution of insurance proceeds as specified in Section 12(a) (v) and (vi), the Association shall obtain the services of a real estate appraiser holding an M.A.I. designation from the American Institute of Real Estate Appraisers who shall appraise and determine the value of each Townhome Unit affected. A determination by said appraiser shall be conclusive and the Association shall make all distributions based on such appraisal.

13. COVENANT AGAINST PARTITION

By acceptance of his deed, each Owner shall be deemed to covenant for himself and for his heirs, representatives, successors and assigns, that he will not institute legal proceedings to effect judicial partition of his interest in the Real Property from the remainder of the Development, the adjacent Unit, or from Common Areas, unless the Real Property has subsequent to this Declaration been removed from under the Montana Unit Ownership Act. In such event of removal from the Act, and absent the institution of a partition action, all owners shall be tenants in common, owning their individual Townhome Units as defined herein, with ownership interests in common elements as identified in Exhibit A. Nothing herein shall prevent co-owners of a particular Townhome Unit or Units from availing themselves of their rights under partition as between themselves, so long as said action does not result in the creation of an additional Unit, and does not result in the severance of a Townhome Unit from this Townhome project.

14. INSURANCE

a. The individual owners will maintain individual insurance for their units, provided such insurance is of a townhome owner type policy, insures the entirety of the structure up to and including the common, shared walls and roof, and the policy of each Owner is of an amount sufficient to provide for ½ of the full replacement cost of the paired structure. Such insurance shall name the other adjoining Unit Owner and the Association as a loss payees, to the extent that Owner and the Association have an interest in shared common elements, and that Owner and Association have a right to know of the existence of required insurance coverage. As such an additional loss payee, the other Owner and Association's interest shall be subordinate to any lender with a security interest in the property. Such insurance coverage should have a waiver of subrogation rights by the carrier as to the other Owner and the Association, and any lender holding a first position lien on such Owner's Unit. This provision for insurance, and the type of insurance coverage called for, may not be changed without the consent of all Owners. Each Owner shall upon demand immediately provide to the Association or the other Owner sharing a common wall proof of such insurance. Should any Owner fail to maintain the insurance as called for herein, it shall be the right of the Association, on its own initiative or upon demand of the adjacent Owner, to secure such required insurance and have the assessments to the defaulting Owner adjusted to reflect such Association-procured insurance coverage.

b. The Association may procure the following type of insurance or insurance coverage:

i. A policy or policies of liability insurance covering the Association, its board of directors, the Declarant, and all their agents and employees against any liability to the public or any Owner, his invites and/or tenants arising from or incident to the ownership, occupation, use, maintenance and/or repair as called for herein. If obtainable a cross liability endorsement insuring each insured against liability to the other insured shall be acquired. Limits of liability on such policies shall be set by the Association on such limits and coverage shall be reviewed at least annually by the Association and increased or decreased in its discretion.

ii. To the extent necessary to comply with any applicable Workman's Compensation laws.

iii. Such other insurance as the Association may deem desirable for the benefit of the Owners or in itself.

iv. The terms of this Article shall not be interpreted to compel the Association

to acquire insurance for the Owner's personal property, nor create liability on the part of the Association should it not procure, pursuant to Section 14. (a), above, insurance on behalf of a defaulting Owner. Each Owner is responsible to acquire such insurance covering his or her own personal property and liability as such Owner deems appropriate.

v. There may be named by the Board of Directors, as an insured, on behalf of the Owners Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance, and to perform such other functions necessary to accomplish such purpose.

vi. The Association, on behalf of the Treasurer or any other officer or Director who handles or is responsible for funds administered by or on behalf of the Association, shall as may be required provide a bond for the faithful discharge of his duties in such sum and with a surety or sureties as the Board of Directors shall determine is appropriate. The cost of any such bond shall be paid for by the Association.

15. GENERAL PROVISIONS

a. Enforcement. The Association or the Owner of any Townhome Unit, including the Declarant, so long as Declarant retains ownership interest in at least one (1) Unit, shall have the right to enforce by proceedings at law or in equity all of the covenants and provisions now or hereafter imposed by this Declaration and the Association's By-Laws and rules, respectively, including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of said covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied, and/or to recover damages for said violation. The result of every act or omission whereby any of the covenants contained in this Declaration or the provisions of the Association's By-Laws and rules are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association, or by its successors in interest. The remedies hereby provided for breach of the covenants contained in this Declaration or the provisions of the Association's By-Laws and rules shall be deemed cumulative, and none of such remedies shall be deemed exclusive. The failure of the Association or an Owner to enforce any of the covenants contained in this Declaration or the provisions of the By-Laws and rules shall not constitute a waiver of the right to enforce the same

thereafter. A breach of the covenants contained in this Declaration or of the provisions of the By-Laws and rules shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value on any Townhome Unit or the improvements thereon; provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether or not such Owner's title was acquired by foreclosure, a trustee's sale, or otherwise. Following notice and hearing, the Association shall have the right and power to assess monetary penalties against a Member and/or suspend said Member's voting rights for the period during which any assessment against his Townhome Unit remains unpaid or for any violation of this Declaration, the Bylaws or for infraction of the rules and regulations enacted by the Association.

b. Severability. The invalidity of any provision of this Declaration shall not affect in any manner the validity or enforceability of the remainder of the Declaration. No provision in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number or duration of violations which may occur.

c. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Real Property and for its maintenance. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

d. Singular Includes the Plural. Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter, and vice versa.

e. Amendments. This Declaration may be waived, abandoned, terminated, modified, altered, changed or amended only by written instrument executed by three quarters of the Owners in attendance of a duly called meeting for such vote, or otherwise by unanimous written consent. Provided, however, Declarant reserves the right to waive, abandon, terminate, modify, alter, change or amend this Declaration up until the Transition Date, or until such earlier time as Declarant may opt out of this provision. All Owners and all mortgagees of a Townhome Unit, by acceptance of a deed, mortgage or trust indenture to any Townhome Unit, shall be deemed to consent to any such waiver, abandonment, termination, modification, alteration, change or amendment by Declarant. In addition to the necessary consent of the Owners to any modifications to this Declaration as is described above, a change in any of the following must also be approved by requesting eligible mortgage holders who represent at least ½ of the votes of Townhome Units subject to mortgages held by eligible mortgage holders (all such eligible mortgage holders in the case of

abandonment of the Declaration); (a) Voting rights; (b) Responsibility for maintenance and repairs; (c) Redefinition of any boundaries for completed Townhome Units after conveyance by Declarant; (d) Expansion or contraction of the project, or the addition or withdrawal of property to or from the project, other than as set forth in this Declaration; (e) Restrictions on leasing of Townhome Units; (f) Imposition of restrictions on an Owner's right to sell his or her Townhome Unit; (g) Restoration or repair of the project in a manner other than as provided in this Declaration. All amendments to the Declaration shall be recorded in the office of the Missoula County Clerk and Recorder, Missoula, Montana.

f. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by registered or certified mail return receipt requested, it shall be deemed to have been delivered when deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Townhome Unit of such person if no address has been given to the Association. If such notice is so sent by regular mail, it shall be deemed to have been delivered when received. Such address may be changed from time to time by notice in writing to the Association.

g. Attorney's Fees. If any Owner defaults in making a payment or assessments or in the performance or observance of any provision of this Declaration, and the Association has obtained the services of an attorney in connection therewith, the Owner covenants and agrees to pay to the Association any costs or fees incurred, including reasonable attorney's fees, regardless of whether legal proceedings are instituted, the Owner shall also pay the cost of the suit, in addition to the aforesaid costs and fees. This provision for recovery of attorney's fees shall apply also to any proceedings in bankruptcy or other insolvency proceedings.

h. Process. Service of process in the cases provided for in Section 70-23-901 of the Montana Code Annotated, shall be made upon the Declarant at c/o Shane Hart, 7105 Highway 12W., Lolo, MT 59847, or following the Transition Date, upon the Registered Agent for the Association. This provision may be amended in the manner provided in Section 70-23-902 of the Montana Code Annotated.

i. Rights and Obligations of Declarant. For each unsold or unfinished Townhome Unit owned by it, Declarant shall have all of the rights and duties afforded to any Owner under the terms of this Declaration, the By-Laws and the rules and regulations adopted by the Association, and Montana law.

j. Notice to Holders, Guarantors, and Insurer's of Mortgages or other Liens on Townhome Units. Upon written request from a holder, insurer or guarantor of a first

mortgage on any Townhome Unit, the Directors of the Association shall provide said holder insurer or guarantor with timely written notice of:

i. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders;

ii. Any condemnation loss of any casualty loss which affects a material portion of the project or which affects any Townhome Unit on which there is a first mortgage held, insured or guaranteed by such holder, insurer or guarantor;

iii. Any delinquency in the payment of assessments or charges owed by an Owner of a Townhome Unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days;

iv. Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

v. Any requested books, records, and financial statements of the Association.

IN WITNESS WHEREOF, the undersigned, has set her hand and seal this 22nd day of August, 2017.

Ponderosa Heights Apartments LLC

Kelly Hart

by: Kelly Hart, Member

STATE OF MONTANA)
:ss.
County of Missoula)

Acknowledged before me this 22nd day of August, 2017 by Kelly Hart, as Member of Ponderosa Heights Apartments LLC.

CHRIS A JOHNSON NOTARIAL SEAL STATE OF MONTANA

CHRIS A JOHNSON
NOTARY PUBLIC for the
State of Montana
Residing at Missoula, MT
My Commission Expires
September 18, 2019.

(SEAL)

Chris A. Johnson

Notary Public for the State of _____
Printed Name: _____
Residing at: _____
My commission expires: _____, 20___

EXHIBIT A

Townhome Unit	Percent
Unit 1	25%
Unit 2	25%
Unit 3	25%
Unit 4	25%

ARCHITECT/ENGINEER/ SURVEYOR'S STATEMENT

Pursuant to Montana Code Annotated §70-23-306, the undersigned states as follows:

1. I am a surveyor licensed and registered in the State of Montana.

2. I have reviewed the site plans to be recorded in conjunction with the Declaration of Pinyon Way Townhomes attached as Exhibit B.

3. The site plans are an accurate copy of the plans filed with and approved by the Missoula City or County officers having jurisdiction to issue building permits and/or accurately represent the buildings and Units as now exist on the property that is the subject of this declaration.

4. The site plans fully and accurately depict the layout, location, unit designation and dimensions of each unit.

By _____
Matt Jacobson
Professional Land Surveyor
13748LS

STATE OF MONTANA)
:ss.
County of Missoula)

Acknowledged before me this 24TH day of August, 2017 by Matt Jacobson.

JOSHUA LUCAS HILLING
NOTARY PUBLIC FOR THE
STATE OF MONTANA
RESIDING AT
MISSOULA, MONTANA
MY COMMISSION EXPIRES
APRIL 20, 2020

(seal)

_____
Notary Public for the State of Montana
Printed Name: JOSHUA LUCAS HILLING
Residing at: MISSOULA, MONTANA
My commission expires: APRIL 20, 2020

ARCHITECT/ENGINEER/ SURVEYOR'S STATEMENT

Pursuant to Montana Code Annotated §70-23-306, the undersigned states as follows:

1. I am an engineer licensed and registered in the State of Montana.

2. I have reviewed the floor plans and unit layout to be recorded in conjunction with the Declaration of Townhomes for the Pinyon Way Townhomes attached as Exhibit B.

3. The floor plans and unit layout are an accurate copy of the plans filed with and approved by the Missoula County officers having jurisdiction to issue building permits and/or accurately represent the buildings as now exist on the property that is the subject of this declaration.

4. The floor plans fully and accurately depict the layout, location, unit designation and dimensions of each unit to be built.

By _____
Mark Boltkamp
licensed engineer

STATE OF MONTANA)
:ss.
County of Missoula)

Acknowledged before me this 1st day of September, 2017 by Mark Boltkamp.

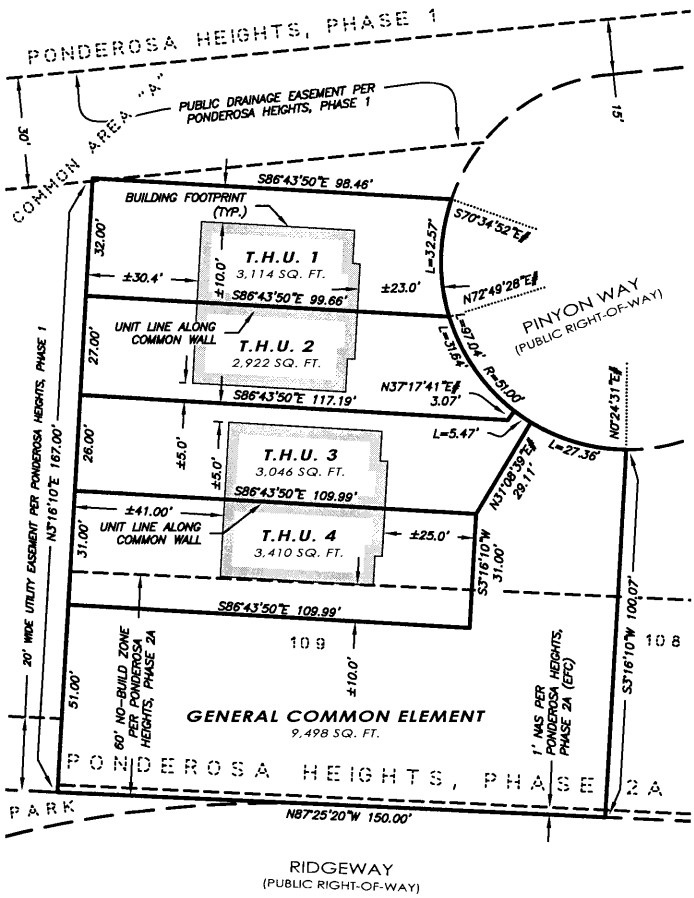
_____
Notary Public for the State of Montana
Printed Name: Holli L Paugh
Residing at: Missoula, MT
My commission expires: November 30, 2020

(seal)

HOLLI L PAUGH
NOTARY PUBLIC for the
State of Montana
Residing at Missoula, Montana
My Commission Expires
November 30, 2020

EXHIBIT B

DEPICTING A TOWNHOME DEVELOPMENT ON LOT 109 OF PONDEROSA HEIGHTS, PHASE 2A, LOCATED IN THE SW1/4 OF SEC. 26, T.13N., R.19W., P.M.M., MISSOULA COUNTY, MONTANA



LEGAL DESCRIPTION OF TOWNHOMES

LOT 109 OF PONDEROSA HEIGHTS, PHASE 2A, A SUBDIVISION OF MISSOULA COUNTY, LOCATED IN THE SOUTHWEST ONE-QUARTER (SW1/4) OF SECTION 26, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN MONTANA, MISSOULA COUNTY, MONTANA. CONTAINING 21,990 SQUARE FEET, MORE OR LESS.

LEGEND

T.H.U.	= TOWNHOME UNIT
SQ. FT.	= SQUARE FEET
∡	= RADIAL BEARING
NAS	= NO-ACCESS STRIP
EFC	= SCALE EXAGGERATED FOR CLARITY

15 0 15 30
SCALE IN FEET

BASIS OF BEARING

MONTANA STATE PLANE – ZONE 2500
GROUND (TRUE) DISTANCES
GRID NORTH

GRID

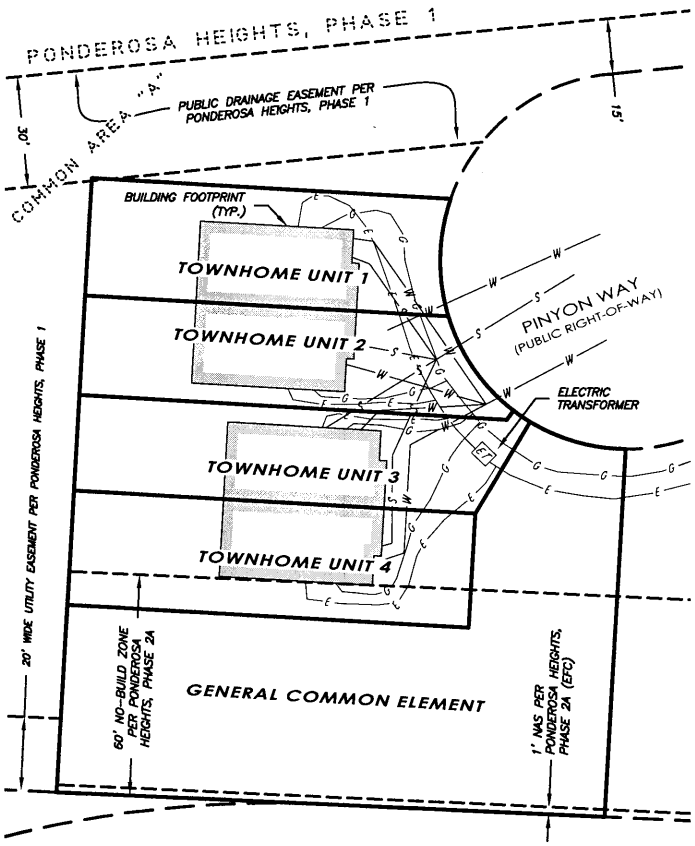
PREPARED BY: TLI PROJ. #17-4547

TERRITORIAL LANDWORKS, INC.
CIVIL ENGINEERING • SURVEYING • LAND USE CONSULTING
www.TerritorialLandworks.com
Phone: 406/721-0142
Fax: 406/721-5224
PO Box 3851
Missoula, MT 59806

PLOT DATE: 6/8/2017 9:54 ADMG LOCATION: T:_ACTIVE FILES\2017 PROJECTS\4547 - HART MOTORSPORTS PONDEROSA HEIGHTS TOWNHOME EXHIBITS\8_DRAFTING\8.1_DRAWINGS\AUTOCAD\THU-17-4547.DWG

EXHIBIT B

DEPICTING UTILITY LINES ON LOT 109 OF PONDEROSA HEIGHTS, PHASE 2A, LOCATED IN THE SW1/4 OF SEC. 26, T.13N., R.19W., P.M.M., MISSOULA COUNTY, MONTANA



N GRID

15 0 15 30
SCALE IN FEET

BASIS OF BEARING
MONTANA STATE PLANE – ZONE 2500
GROUND (TRUE) DISTANCES
GRID NORTH

LEGEND

NAS	= NO-ACCESS STRIP
EFC	= SCALE EXAGGERATED FOR CLARITY
—S—	= SEWER LINE
—W—	= WATER LINE
—G—	= GAS LINE
—E—	= ELECTRIC LINE AND TELEPHONE LINE

PREPARED BY: TLI PROJ. #17-4547

TERRITORIAL LANDWORKS, INC.
CIVIL ENGINEERING • SURVEYING • LAND USE CONSULTING
www.TerritorialLandworks.com
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PO Box 3851
Missoula, MT 59806

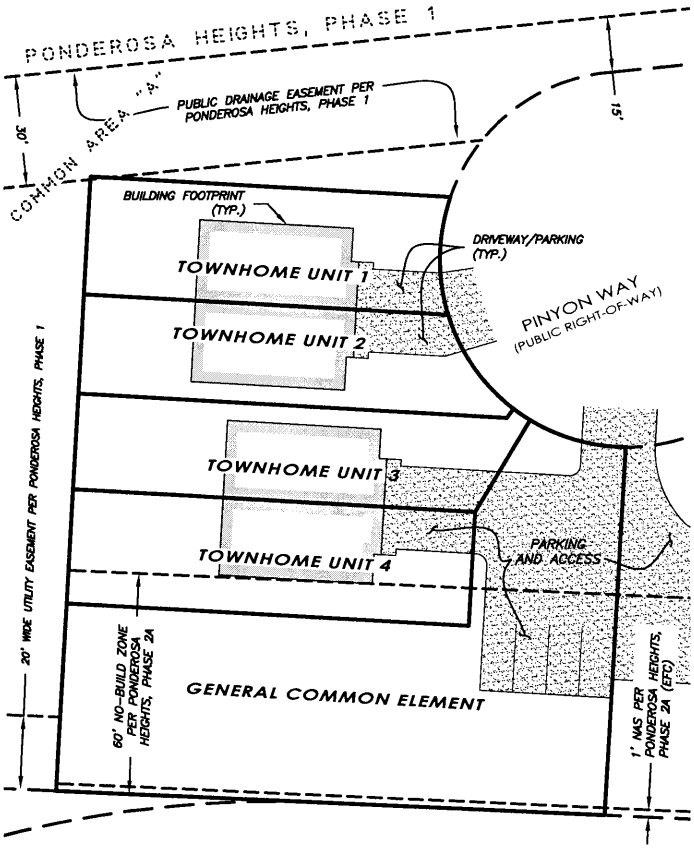
UTILITY NOTE:

UTILITY LINE LOCATIONS SHOWN HEREON WERE GRAPHICALLY SCALED FROM AN AS-BUILT SKETCH PROVIDED BY THE CONTRACTOR.

PLOT DATE: 6/8/2017 10:08 .DWG LOCATION: T:\1_ACTIVE FILES\2017 PROJECTS 4547 - HART MOTORSPORTS PONDEROSA HEIGHTS TOWNHOME EXHIBITS\2_DRAFTING\1_DRAWINGS\AUTOCAD\THU-17-4547.DWG

EXHIBIT B

DEPICTING TOWNHOMES AND PARKING ON LOT 109 OF PONDEROSA HEIGHTS, PHASE 2A, LOCATED IN THE SW1/4 OF SEC. 26, T.13N., R.19W., P.M.M., MISSOULA COUNTY, MONTANA



N GRID

15 0 15 30
SCALE IN FEET

BASIS OF BEARING
MONTANA STATE PLANE – ZONE 2500
GROUND (TRUE) DISTANCES
GRID NORTH

LEGEND

NAS = NO-ACCESS STRIP
EFC = SCALE EXAGGERATED FOR CLARITY

PREPARED BY: TLI PROJ. #17-4547

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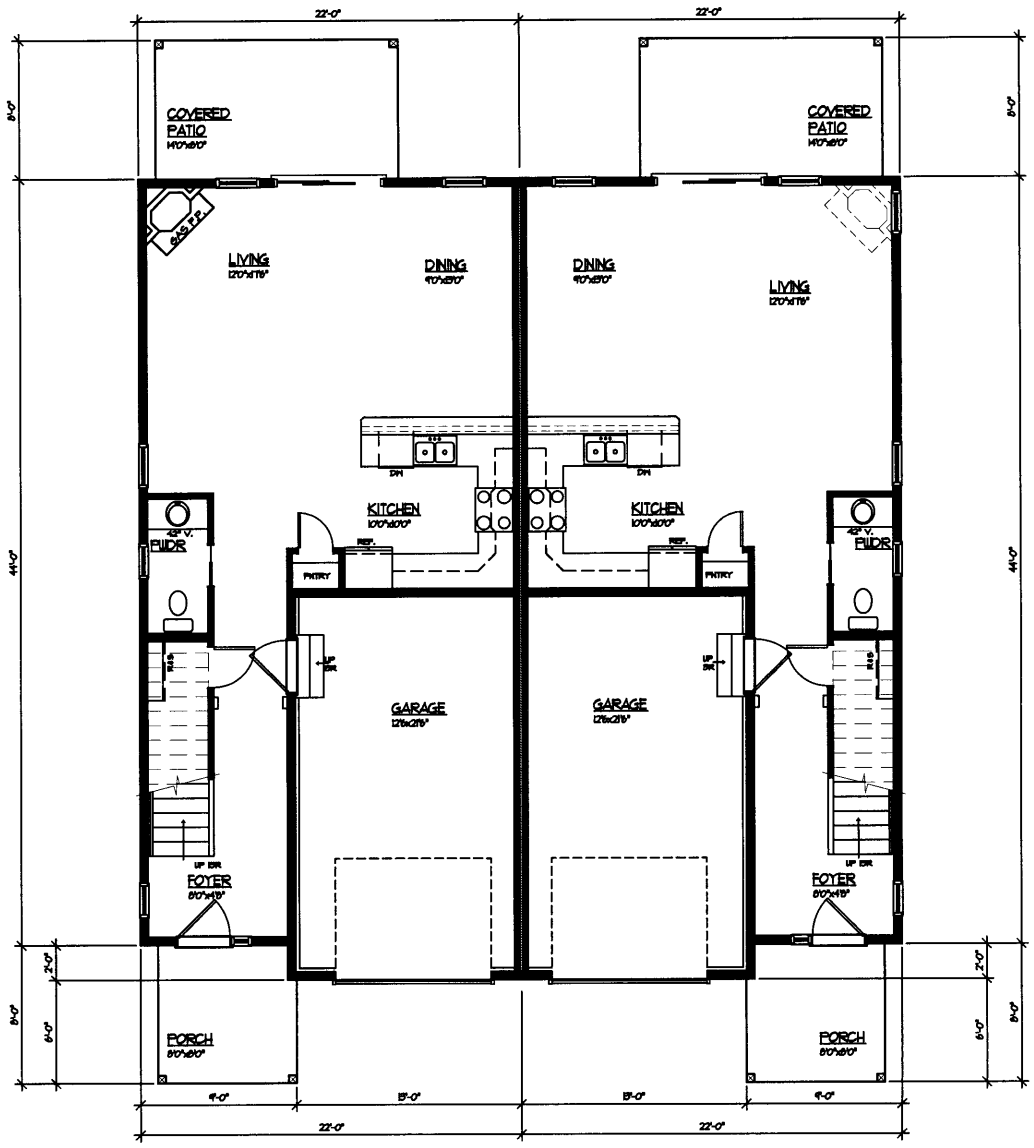
Missoula, MT 59806

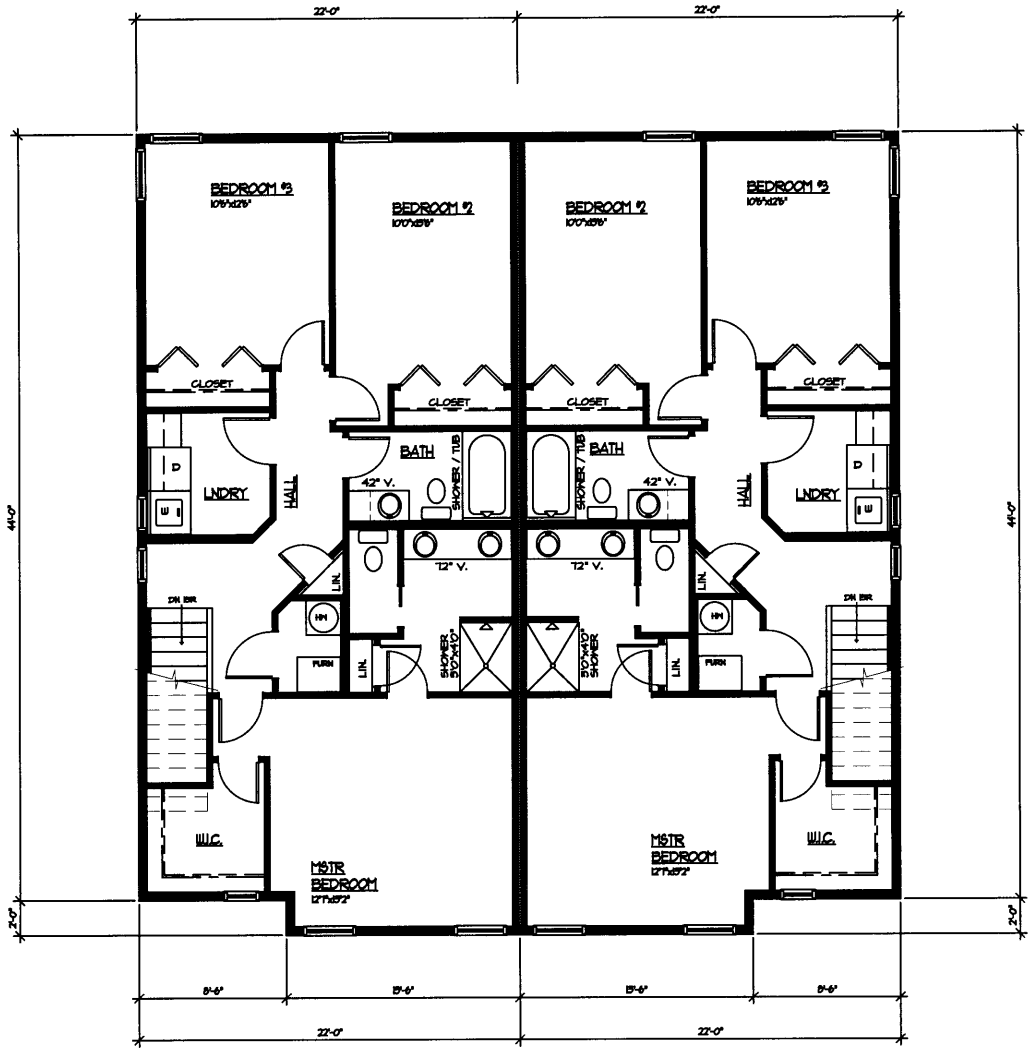
PLOT DATE: 6/22/2017 2:41 PM/G LOCATION: T:_ACTIVE FILES\2017 PROJECTS 4547 - HART MOTORSPORTS PONDEROSA HEIGHTS TOWNHOME EXHIBITS\8_DRAFTING\8.1_DRAWINGS\AUTOCAD\TH-U-17-4547.DWG



1 / A1.0 MAIN FLOOR PLAN THREE BED

SCALE: 1/4" = 1'-0" 1625 S.F.

EXHIBIT B

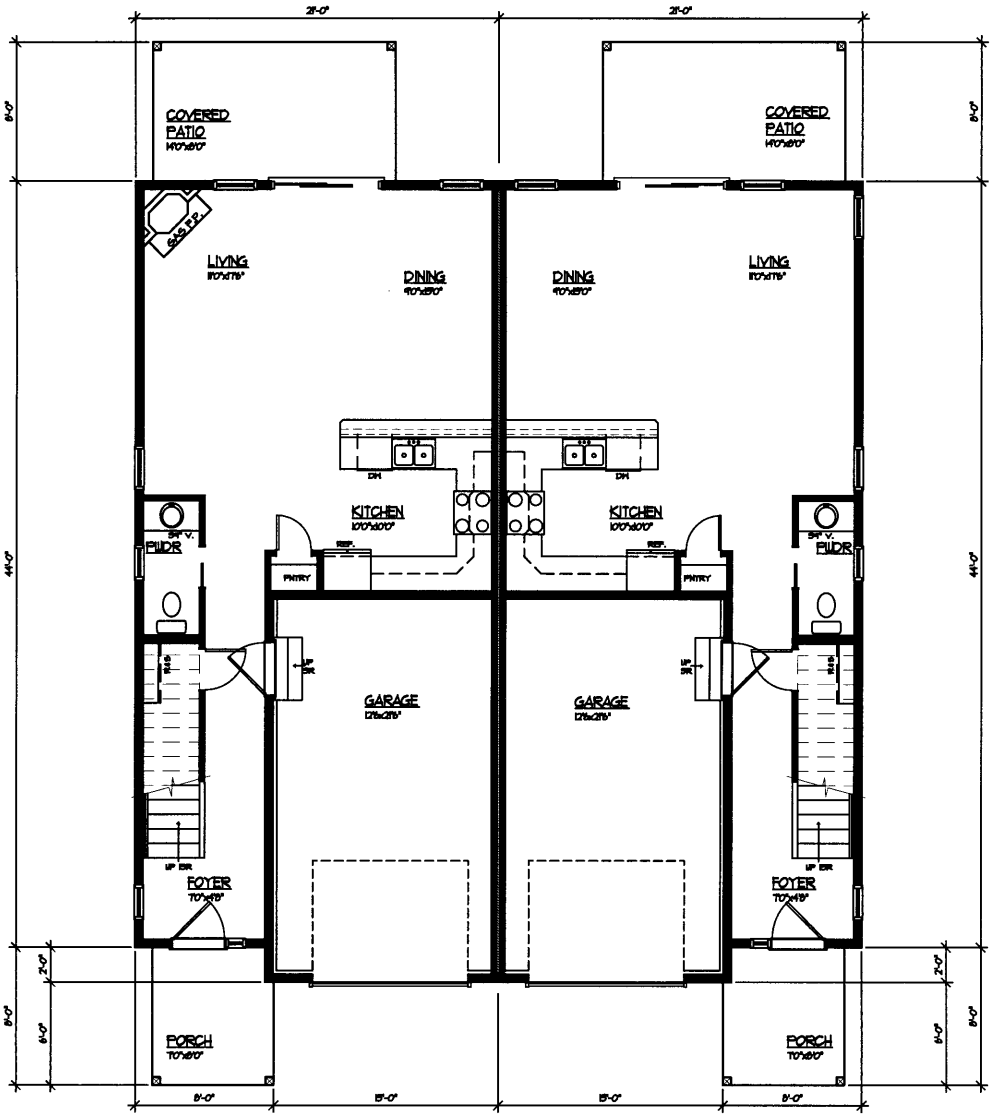


2
A1.0

UPPER FLOOR PLAN THREE BED

SCALE: 1/4" = 1'-0" 955 S.F.

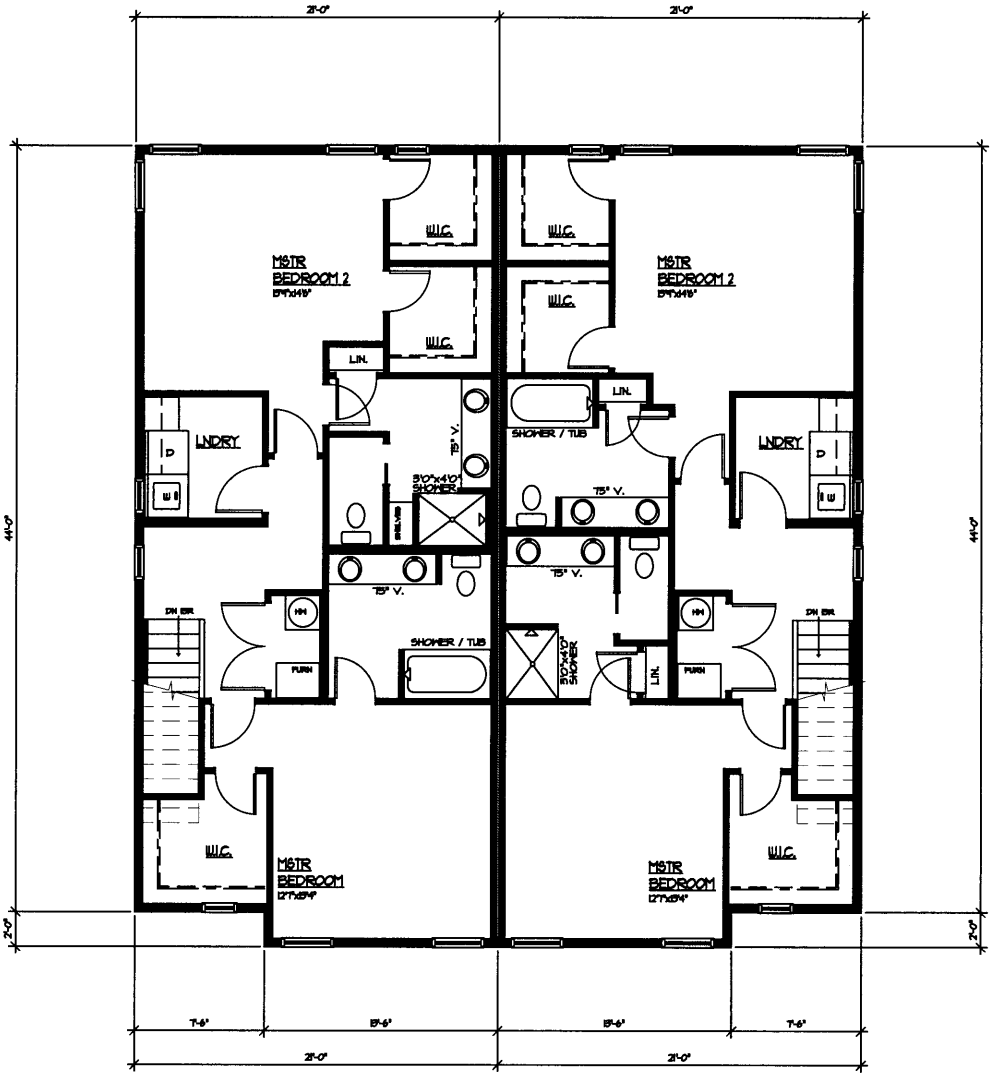
EXHIBIT B



1 A1.0 MAIN FLOOR PLAN TWO BED

SCALE: 1/8"=1'-0"

EXHIBIT B



2 / A1Ø UPPER FLOOR PLAN TWO BED

SCALE: 1/8"=1'-Ø"

EXHIBIT B

MISSOULA COUNTY

MISSOULA COUNTY COMMUNITY AND PLANNING SERVICES
200 W. BROADWAY
MISSOULA, MONTANA 59802-4292
PHONE: (406) 258-4657 FAX: (406) 258-3920

Planning & Permitting • Conservation & Communities • Parks & Trails

Townhouse Certification Letter

August 11, 2017

Ponderosa Heights Apartments, LLC
C/O Chris Johnson
PO Box 4747
Missoula, MT 59806

Dear Ponderosa Heights Apartments, LLC,

I have reviewed the property legally described as Lot 109 Ponderosa Heights Phase 2A. It is our understanding that you desire to file a Declaration of Townhouse Ownership to establish the property addressed as 6448 Pinyon Way – Unit 1and Unit 2 (Unit 1 and Unit 2 of Pinyon Way Townhomes) and 6443 Dylan Drive – Unit 1and Unit 2 (Unit 3 and Unit 4 of Pinyon Way Townhomes) of this development as townhomes.

County Exemption

1. Condominiums, townhomes, or townhouses, if constructed in the County of Missoula on land subdivided in compliance with State Law (MCA, Title 76, Chapter 3, Parts 5 and 6)[1], are exempt from subdivision review if:

   ☒ a. The approval of the original subdivision of land where the condominiums, townhomes, or townhouses will be constructed was land expressly contemplated for the construction of the condominiums, townhomes, townhouses and any applicable park dedication requirements of these regulations and the Montana Subdivision and Platting Act (MSPA) are complied with; or

   ☒ b. The condominium, townhome or townhouse proposal is in conformance with applicable local zoning regulations where local zoning regulations are in effect.

      i. Units 1 and 2 at 6448 Pinyon Way (Unit 1 and Unit 2 of Pinyon Way Townhomes) and Units 1 and 2 at 6443 Dylan Drive (Unit 3 and Unit 4 of Pinyon Way Townhomes) were determined to be in compliance with applicable local zoning regulations on January 23, 2017 under permit numbers LZ17024951 and LZ17024956.

[1] COS survey tracts, tracts created by deed, and subdivisions approved prior to 1973 are not eligible for exemption.

WORDEN THANE PC AUG 15 2017

This proposal complies with the Subdivision Exemption Regulations as they apply to townhomes.

If you have any further questions you may contact Community and Planning Services at 406-258-4657.

Sincerely,

Casey Drayton
Planner
Missoula County Community and Planning Services

CC: Chris Johnson via cjohnson@wordenthane.com

DEQ
Montana Department
of Environmental Quality

August 29, 2017

Andrew Mill
Territorial Landworks
PO Box 3851
Missoula MT 59806-3851

RE: Pinyon Way Townhomes
Municipal Facilities Exclusion
EQ# 18-1170
City of Lolo
Missoula County

Dear Mr. Mill;

This is to certify that the information and fees received by the Department of Environmental Quality relating to this subdivision are in compliance with 76-4-127, MCA. Under 76-4-125(2)(d), MCA, this subdivision is not subject to review, and the plat can be filed with the county clerk and recorder.

Plans and specifications must be submitted when extensions of municipal facilities for the supply of water or disposal of sewage are proposed 76-4-131. Construction of water or sewer extensions prior to DEQ, Public Water Supply Section's approval is prohibited, and is subject to penalty as prescribed in Title 75, Chapter 6 and Title 76, Chapter 4.

Sincerely,

Leata English
Subdivision Section
(406) 444-4224
email lenglish@mt.gov

cc: City Engineer
County Sanitarian
Owner
file

ATTACHMENT I

No sprinklers req. see email

CONDITIONS OF APPROVAL - REVISED
PONDEROSA HEIGHTS SUBDIVISION
APRIL 3, 2006

Roads

1. Bull Pine Street shall be redesigned as a cul-de-sac road meeting all County Road standards for construction, with a maximum length of road as measured from Yellow Pine Street not to exceed 1,600 feet, subject to review and approval by County Public Works and the Missoula Rural Fire District, prior to final plat approval of Phase 1.

2. The One Foot No Access strip on Ridgeway Drive shall extend the entire length of frontage on this subdivision, except for the intersection with Yellow Pine Street, subject to review and approval by County Public Works, prior to final plat approval of Phase 1.

3. A second emergency access road shall be provided from this subdivision; the location, construction specifications and plans for year-round maintenance by a Homeowners Association are subject to review and approval by the Missoula Rural Fire District and County Public Works, prior to final plat approval of Phase 1.

4. The western extension of the Jack Pine Way right-of-way and paved road shall be shortened a minimum of 50 feet. Plans for shortening the western extension of Jack Pine Way and any new lot/driveway configuration shall be reviewed and approved by OPG and County Public Works prior to final plat approval of Phase 1.

5. A signage plan in conformance with the Manual on Uniform Traffic Control Devices, including provisions for temporary signage during construction, permanent signage, and the cost of installation to be responsibility of the subdivider, shall be reviewed and approved by County Public Works prior to final plat approval of Phase 1.

6. The road and utility easement between Lots 91 and 92 shall be designated as a public right-of-way, subject to review and approval by County Public Works, prior to final plat approval of Phase 1.

Parks

7 A. Parks A and B shall be relabeled as "Common Area" to be maintained by the Homeowners Association. Park A shall not be used for a drainage retention pond and instead shall be an improved recreation area, including grading, topsoil, seeding and commercial irrigation. The common area shall be dedicated in amounts required by the net lotted area of each phase or with Phase 1.

B. The subdivider shall file a development agreement against portions of Tracts 5, 6 and 9 of COS 2951 and Tract 1 of COS 4968, outside the boundaries of this subdivision in Paul Rossignol's ownership, to allocate a public park on land less than 3% slope, if an when this land north of Ponderosa Heights is subdivided or developed. This park must be visually and physically accessible to the public with appropriate connections to public rights-of way, subject to review and approval by County Parks and OPG. This development agreement shall be subject to review and approval by the Missoula Board of County Commissioners prior to final plat approval of Phase 1.

8. The following statement shall appear on the face of the plat, subject to review and approval by County Parks:

ATTACHMENT I

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for a future parks maintenance district in Lolo."

Phasing Plan

9. The phasing plan shall be revised to account for the revisions to the plat resulting from conditions of subdivision approval, subject to review and approval by OPG and County Public Works, prior to final plat approval for Phase 1.

Subdivision Redesign Plan

10. A plan for revising the subdivision design resulting from the subdivision conditions of approval shall be reviewed and approved by OPG, County Public Works, County Parks and the Missoula Rural Fire District, prior to final plat approval of Phase 1.

Fire

11. The subdivider shall present evidence of having petitioned into the Missoula Rural Fire District, prior to final plat approval of Phase 1.

12. Prior to final plat approval, the covenants shall be amended to include the requirement that plans for driveways in excess of 150 feet shall be reviewed and approved by the Missoula Rural Fire District. This section of the covenants may not be changed or deleted without governing body approval.

13. Plans for addressing buildings so that address signs are clearly visible from the street shall be reviewed and approved by the Missoula Rural Fire District and included in the covenants, which may not be changed or deleted without governing body approval.

14. Plans for fire sprinklers systems for all lots within the subdivision shall be incorporated into the covenants and shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval of Phase 1.

Pedestrian Facilities

15. The subdivider shall install minimum 5 foot wide curbside sidewalk on the east side of Yellow Pine Street from the point of intersection with Ridgeway Drive, to connect to the proposed sidewalk on the east side of Yellow Pine Street, approximately 600 feet north of Ridgeway Drive and just south of proposed Lot 2, subject to review and approval of OPG and County Public Works, prior to final plat approval of the phase in which this section of road is located. The sidewalk on the west side of Yellow Pine Street, north of Pinon Way, shall be continued to the intersection of Yellow Pine Street and Bull Pine Street, subject to review and approval of OPG and County Public Works, prior to final plat approval of the phase in which this section of road is located.

16. The subdivider shall install 5 foot wide curbside sidewalk on the east / south side of Bull Pine Street, also known as Sugar Pine Street, extending approximately 1000' from the intersection with Yellow Pine Street, also known as Coulter Pine Street, to the point where Lot 14 and the Common Area intersect, subject to review and approval by OPG and County Public Works, prior to final plat approval of the phase in which Bull Pine Street, also known as Sugar Pine Street, (or portions thereof) is located.

17. The subdivider shall install 5' wide curbside sidewalk along the south side of Yellow Pine Street, also known as Coulter Pine Street, between Bristle Cone Street and Bill Pine Street, also known as Sugar Pine Street, subject to review and approval by OPG and County Public Works, prior to final plat approval of the phase in which Yellow Pine Street, also known as Coulter Pine Street, (or portions thereof) is located. The subdivider shall also install 5' wide

ATTACHMENT I

curbside sidewalk along the east side of Limber Pine Street, subject to review and approval by OPG and County Public Works, prior to final plat approval of the phase in which Limber Pine Street (or portions thereof) is located.

18. The subdivider shall construct a minimum 5 foot wide gravel, asphalt or concrete trail within Park Area C, subject to review and approval of OPG and County Parks, prior to final plat approval of the phase in which Park Area C is located.

19. The subdivider shall present evidence of petitioning into the Missoula Urban Transportation District prior to final plat approval of Phase 1.

Sewer and Water

20. The subdivider shall present evidence of petitioning for annexation and acceptance into the Lolo Sewer and Water District RSID 901, subject to review and approval by County Public Works, prior to final plat approval of Phase 1.

No Build Zones

21. The plat shall be revised to show a No Build Zone along the southern 60 feet of Lots 106 through 109 and along the southern 25 feet of Lots 103 through 105 (measured from edge of the Ridgeway Drive right-of-way). All No Build Zones shall be kept open and free of structures, including buildings, mobile homes, garages, carports, etc. The No Build Zones do not exclude fences or underground utilities. A map of all No Build Zones, and the above provisions of the No Build Zones, shall be incorporated into the covenants and may not be changed or deleted without approval of the governing body.

Air Quality

22. The subdivider shall prepare and file a development agreement containing a plan that will mitigate, on a pound for pound basis, the increased fugitive emissions caused by hillside development, subject to review and approval by the City-County Health Department and the County Attorney's Office, prior to final plat approval of Phase 1.

Radon

23. The subdivider shall amend the covenants stating that the EPA has designated Missoula County as having a high radon potential (Zone1) and recommends all new construction incorporate a radon mitigation system. This covenant may not be changed or deleted without governing body approval.

Weeds

24. The subdivider shall prepare a Revegetation Plan for disturbed areas in the subdivision, requiring revegetation with beneficial species of any areas of ground disturbance created by construction on or maintenance of these lots, to be incorporated into the covenants, subject to review and approval by the Missoula County Weed District prior to final plat approval. The Revegetation Plan and the provision requiring compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan may not be changed or deleted without governing body approval.

Wildlife

25. The subdivider shall amend the covenants to include the following language regarding Living with Wildlife, prior to final plat approval, and it may not be changed or deleted without governing body approval.

    "Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing

ATTACHMENT I

garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, black bear, mountain lion, coyote, fox, skunk, raccoon and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see the Education portion of FWP's web site at www.fwp.mt.gov.

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

1. Homeowners must be aware of the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.

2. Gardens and fruit trees can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because rotting vegetable material can attract bears, skunks and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.

3. Garbage must be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, and dogs. Do not set garbage cans out until the morning of garbage pickup.

4. Do not feed wildlife or offer supplements (such as salt blocks), attractants or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.

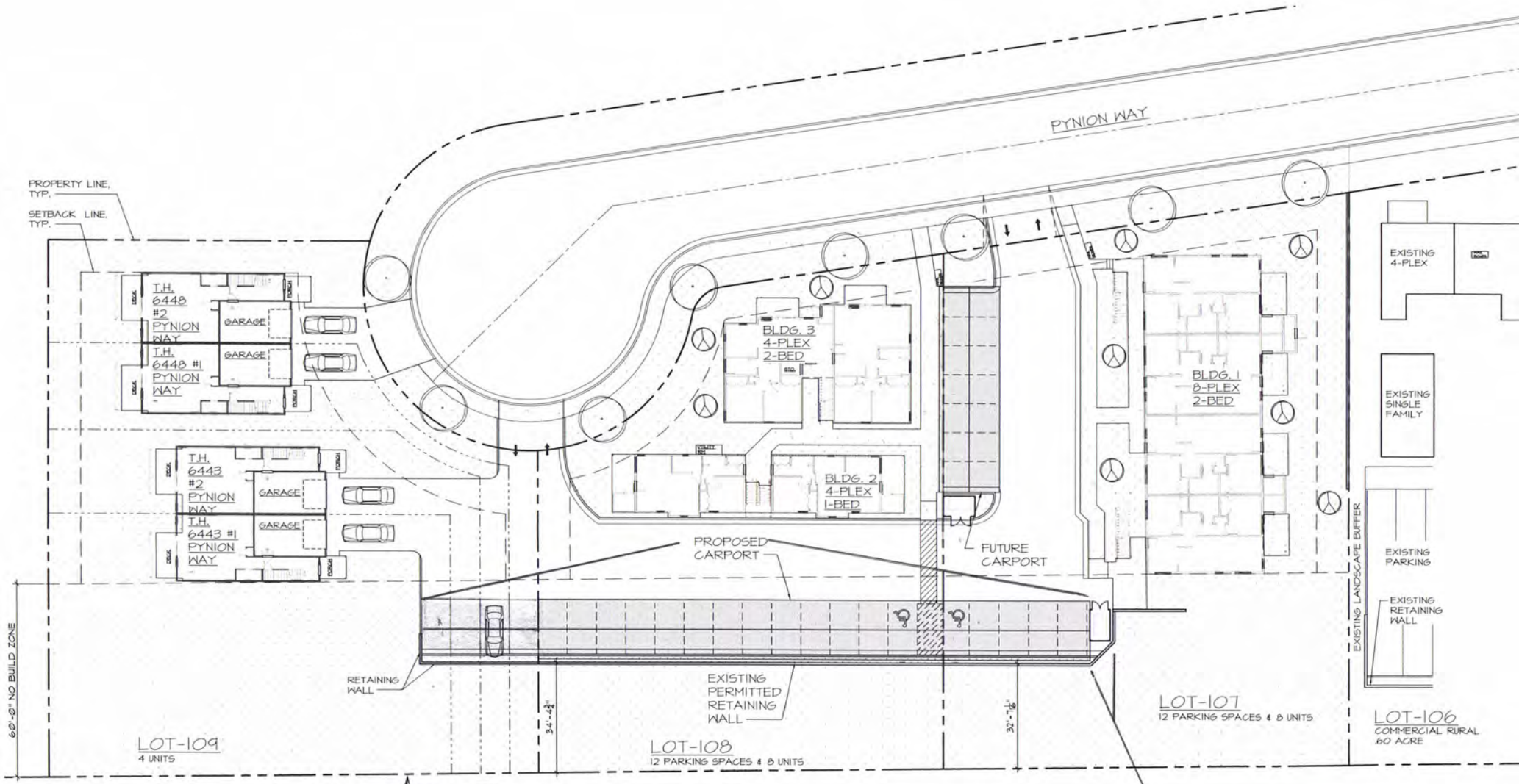
5. Bird feeders attract bears. Use of bird feeders is not recommended from April 1st through the end of November. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level; b) be at least 4 feet from any support poles or points; and c) be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.

6. Pets must be confined to the house, in a fenced yard or in an outdoor kennel area when not under the immediate control of the owner and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law, it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).

7. Pet food and/or livestock feed must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such bears, mountain lions, skunks, raccoons and other wildlife. When feeding pets [and/or livestock], do not leave

ATTACHMENT I

food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.



1 / C1.0 SITE PLAN
SCALE: 1" = 20'-0"

* shaded area along retaining wall is proposed carport

LANDSCAPE MAINTENANCE

IRRIGATION:
Program installed irrigation system to maintain constant moisture to a depth of 18" which will encourage extensive root growth.

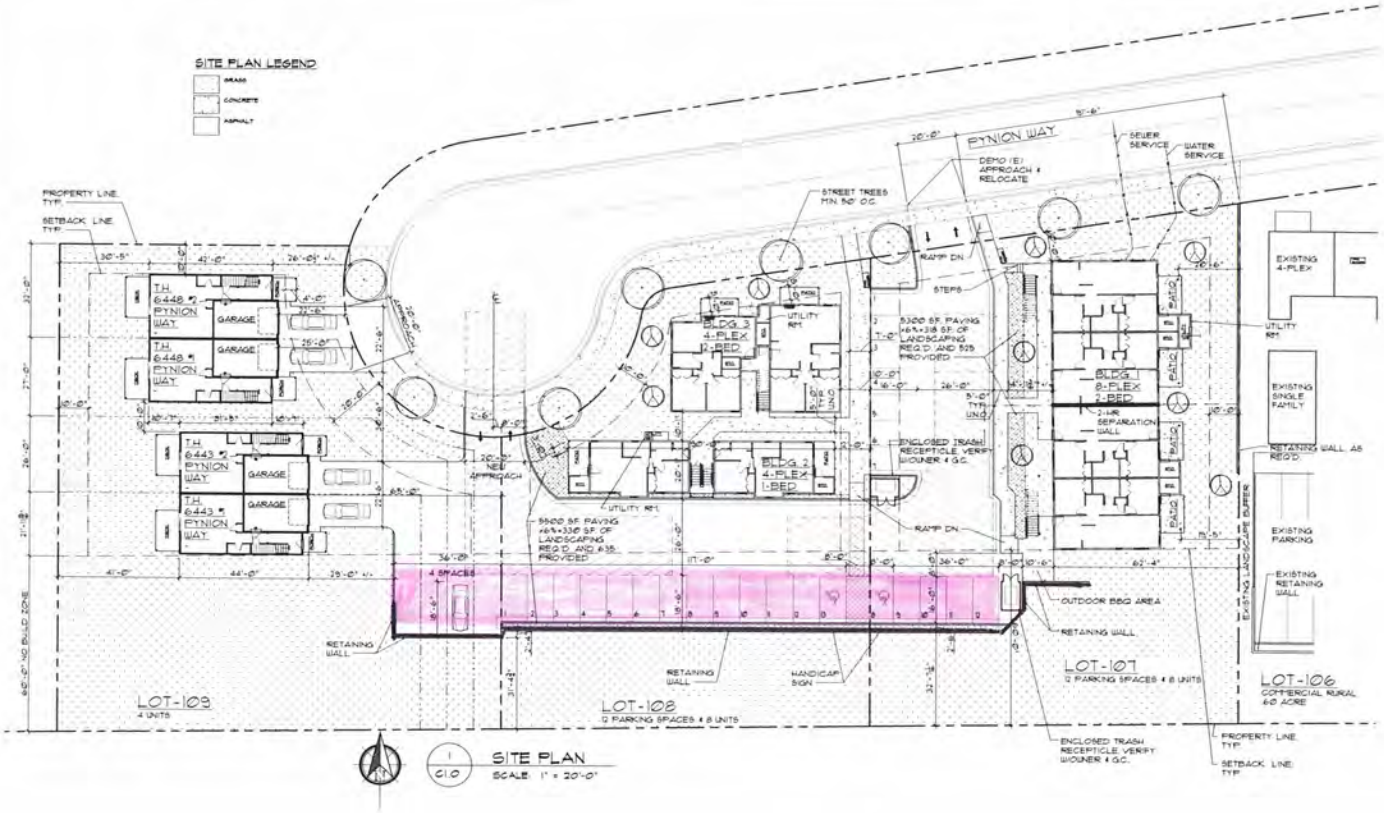
INTEGRATED PEST MANAGEMENT
Keep all debris cleared from around plants to maintain health of plantings. Use approved integrated pest management practices.

FERTILIZATION
Fertilize twice annually in Spring and Summer with a slow release fertilizer appropriate to each landscape planting area. Use a standard brand of fertilizer recognized by the U.S. Dept. of Agriculture.

TREE CARE AND PRUNING
Prune trees only to remove dead wood and hazardous branches. DO NOT shear or otherwise prune trees to create unnatural shapes. Small ornamental trees are not to be pruned as shrubs. Refer to landscape installation plan to maintain the natural shape of the trees listed. Fertilize annually as noted above.

REPLACEMENT OF VEGETATION
Any damaged or dead vegetation must be replaced by same plant material that was removed.

WEED MANAGEMENT
Manage weeds weekly during the first year according to the Missoula County Weed Management Plan. Thereafter, inspect monthly during the growing season to keep weeds under control.



C1.0 SITE PLAN
SCALE: 1" = 20'-0"

*Note: Proposed carport highlited in pink

DRAWN BY: JOE STELLING
DATE: 10.20.16
REVISED

A NEW PROJECT FOR:
LOLO PEAK BUILDERS, LOLO, MT

LIPPERT ARCHITECTURE
P.O. Box 1945 Missoula, MT 59806 Cell:(406) 239-0939
Phone/Fax: (406) 251-5653 www.lparch.com

JOB # 142

SHEET C1.0 OF