

After recording return to:
BarTimco Properties, LLC
701 Gold Ave.
Bozeman, MT 59715

Declaration of Covenant

This Declaration is made this ____ day of _____, 2018 by BarTimCo Properties, LLC, a Montana limited liability company with address of 701 Gold Ave., Bozeman MT 59715 (“Declarant”), as owner of the following property:

SITUATED IN THE SE ¼ SECTION 22 AND THE NE ¼ SECTION 27, TOWNSHIP 1
SOUTH, RANGE 5 EAST,
PRINCIPAL MERIDIAN, CITY OF BOZEMAN, GALLATIN COUNTY, MONTANA.

being Tract 1C and Tract 1D of Certificate of Survey No. 1372 B, located in the SE ¼ of Section 22, and that portion of the Northeast quarter of the Northeast quarter (NE1/4 NE1/4) and the East Half of the East Half of the West Half of the Northeast quarter (E1/2 E1/2 W1/2 NE1/4) of Section 27 lying North and East of the Burlington Northern Railroad Right-of-Way, excepting that portion of the NE1/4 NE1/4 sold to the Montana Department of Transportation by deed recorded in Document No. 2175391 as recorded in the office of the Clerk and Recorder of Gallatin County, Montana; situated in Township 1 South, Range 5 East, Principal Meridian, City of Bozeman, Gallatin County, Montana, more particularly described as follows:

Beginning at the Northeast Corner of Section 27, also being the Southeast Corner of Tract 1C of Certificate of Survey No. 1372 B, **the Point of Beginning**; thence S.1°53’26”W. along the East line of Section 27 a distance of 836.91 feet to the Northeast Right-of-Way line of the Burlington Northern Railroad; thence N.52°18’43”W. along said Railroad Right-of-Way a distance of 581.25 feet to the Right-of-Way of the Montana Department of Transportation Bargain and Sale Deed Document No. 2175391; thence N.37°41’29”E. along said Right-of-Way a distance of 0.70 feet; thence N.15°43’59”W. a distance of 81.76 feet; thence N.52°18’31”W. a distance of 98.49 feet; thence N.69°31’56”W. a distance of 166.95 feet to the Northeast Right-of-Way line of the Burlington Northern Railroad; thence N.52°18’43”W. along said Railroad Right-of-Way a distance of 1613.49 feet; thence N.1°48’08”E. a distance of 712.83 feet; thence S.89°52’46”E. a distance of 2047.78 to the Northeast Corner of Tract 1C of Certificate of Survey No. 1372 B, also being the West Right-of-Way line of a 40’ wide County Road No. 259 Easement; thence S.2°00’58”W. a distance of 1412.22 to **the Point of Beginning**. The area of the above described tracts of land being 69.263 Acres, more or less.

WHEREAS, Declarant intends to develop, sell and convey the above-described real property, hereinafter referred to as "Nelson Meadows "; and,

WHEREAS, Declarant desires to subject all of said real property, together with the lots contained therein, to the covenants, conditions, restrictions and reservations herein set forth and referred to as "Covenants";

NOW, THEREFORE, Declarant does hereby establish, dedicate, declare, publish and impose upon the property the following Protective and Restrictive Covenants, which shall run with the land, and shall be binding upon and be for the benefit of all persons claiming such property, their grantors, legal representatives, heirs, successors and assigns, and shall be for the purpose of maintaining a uniform and stable value, character, architectural design, use, and development of the Property. Such Covenants shall apply to the entire Property, and all improvements placed or erected thereon, unless otherwise specifically excepted herein. The Covenants shall inure to and pass with each and every parcel, tract, lot or division. Said Covenants follows:

DEFINITIONS

Section 1. The term "Association" shall mean the Nelson Meadows Owners' Association, its successors and assigns. The Association may be incorporated as a Montana non-profit corporation, with its members as the lot owners.

Section 2. The term "member" shall mean any owner or lot owner. Each member or owner agrees to abide and be bound by these Covenants, the Articles of Incorporation, the Bylaws and the Resolutions of the Association, if any.

Section 3. The term "owner" or "lot owner" shall mean any person or entity owning a fee simple interest in a lot or a contract purchaser, whether one or more persons or entities, owning or purchasing a lot, but excluding those having a mortgage or an interest merely as security for the performance of an obligation; provided, however, that prior to the first conveyance of a lot for value, the term "owner" shall mean "Declarant" or its successors or assigns. The term "person" hereinafter shall include any person, persons or entities.

Section 4. The term "contract purchaser" shall mean a person buying a lot pursuant to a contract for deed, Montana Trust Indenture or mortgage.

Section 5. The terms "lots" and "units" shall mean all of the real property herein described and subsequently surveyed and platted into lots and condominium units declared pursuant to the Montana Unit Ownership Act within the Property.

Section 6. The term "Directors" shall mean the Board of Directors of the Association, and shall, after the term of appointment set forth in the Bylaws, consist of three lot owners who shall be elected at the annual meeting by a simple majority of the members of the Association. The

Board of Directors shall be elected for a term set by a simple majority of the membership, but not less than one year. Any vacancy in the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining Directors.

The Directors shall have the authority to act on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association and enforce these Covenants. The Directors shall act by majority vote. The officers of the Association shall follow the directions of the majority vote of the Directors.

Section 7. The term "open space" means that area set designated on the final plat as future open space for the use of the property owners.

Section 8. Other definitions may be found throughout these covenants and those definitions are binding upon all owners. Any term not specifically defined shall be deemed to have a common and ordinary meaning.

ARTICLE II OWNERS' ASSOCIATION

Section 1. An association is hereby established and known as "Nelson Meadows Owners' Association" hereinafter referred to as the "Association." Said Association may be incorporated under a different name as may be approved by the Montana Secretary of State.

Section 2. Every owner or contract purchaser of a lot shall be a member of the Nelson Meadows Owners' Association. Membership shall be appurtenant to and may not be separate from the ownership of any lot or unit. Each owner shall be responsible for advising the Association of their acquisition of ownership, of their mailing address, and of any changes of ownership or mailing address. The initial address of the Association shall be 701 Gold Ave., Bozeman MT 59715. The address of the Association may be changed by the Board of Directors upon notice to the owners.

Section 3. For the purpose of determining membership, at any meeting a person or entity shall be deemed to be a member upon the recording of a duly executed deed to that owner, or upon the recording of a Notice of Purchaser's Interest or an Abstract of Contract for Deed showing a contract purchase by an owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership.

Foreclosure of a mortgage, trust indenture or the termination or foreclosure of a contract for deed wherein title is vested in the mortgage, beneficiary or original seller on a contract, or repossession for any reason of a lot or unit sold under a contract shall terminate the vendee's membership, whereupon all rights to such membership shall vest in the legal owner.

Section 4. The annual meeting of the Association shall occur on the date set forth in the Bylaws and in all events the first annual meeting shall be held within the 12 month period after the sale of the first tract of record from the Declarant to a bona fide purchaser.

Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, a special meeting shall be held upon call of fifty percent (50%) of the owners. Special meetings shall require seven (7) days' notice, in writing. Notice of annual and special meetings shall be mailed to owners at the address for each owner as provided pursuant to Section 2 of this Article. The presence of members representing 50% of the total votes of the membership shall constitute a quorum. Proxy votes are allowed so long as the proxy is provided to the Association not less than twenty-four (24) hours prior to the meeting, is signed by the lot owner(s), is dated and clearly identified the party or person entitled to exercise the vote.

At the annual meeting, the members shall review and approve a budget for the next year, shall elect Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association. The members shall have the authority to set the number of Directors, which number shall not be less than three nor more than seven. The presence of members representing 30% of the total votes of the membership shall constitute a quorum.

The membership shall vote on the matters presented to them in the following manner: each lot/tract or parcel shall have one (1) vote regardless of the number of members or owners of said lot/tract or parcel.

Passage of any motions shall require a simple majority of the members present.

Section 5. The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the members. At the annual meeting, the Directors shall elect a President, Vice-President and Secretary-Treasurer for the Association from among the Directors, except that the Secretary-Treasurer may be a member who is not a Director.

Section 6. The Board of Directors shall serve for a term to be set by a simple majority of the membership, which shall not be for less than one year. Each director shall serve until replaced by his or her successor. Any vacancy on the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining directors.

Section 7. The Board of Directors shall have the power and responsibility of acting on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association, including but not limited to take such actions as shall be necessary or reasonable to care for, protect and maintain the common open space and boundary fences, to enforce these Covenants; to collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special

improvement districts, either public or private, for such improvements as the Association shall approve.

The Directors shall act by simple majority vote.

Section 8. The duties of each of the offices shall be as follows:

A. President. The President shall preside over all meetings of the Association. He or she shall call the membership together whenever necessary. The President shall be the general administrative and executive officer of the Association, and shall perform such duties as may be specified, and exercise such powers as may be delegated to the office of President by the Board of Directors.

B. Vice-President. The Vice-President shall exercise the powers of the President in the absence of the President.

C. Secretary-Treasurer. The Secretary shall give notice of all meetings of the Association, and shall keep a record of the proceedings of the meetings of the Association. The Secretary shall be authorized to sign on behalf of the Association, all records, documents and instruments when such are authorized to be signed by the Association.

The Treasurer shall keep and maintain adequate and correct accounts of the accounts, properties, and business of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains and losses of the Association. The Treasurer shall prepare and report such periodic accountings as shall be required by the Association.

Section 9. A vacancy in any office of the Association shall be filled by appointment by the Board of Directors until the next annual meeting or the successor is duly appointed or elected.

ARTICLE III ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Assessments.

Each owner, whether or not it shall be so expressed in any deed or contract, is deemed to have agreed to these Covenants, and to pay to the Association:

- (1) Annual assessments or charges; and,
- (2) Special assessments for capital improvements and reserve assessments, such assessments to be established and collected as hereinafter provided; and
- (3) Fines as may be established by the Board of Directors and enforcement by levying and filing a lien against the lots.

The annual, special and reserve assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each assessment, together with the interest, costs and reasonable attorney's fees, shall be the personal obligation of the owner of such property at the time when the assessments are due.

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used to promote the recreation, health, safety, convenience and welfare of the owners, for the improvement, roads, parking maintenance and snow removal, storm water detention basin, drainage/infiltration facilities, sewer and water services for the Association, site lighting maintenance and repair, site lighting electrical bills and costs, repair and operation costs, open space repair and maintenance, taxes assessed against areas for parking and open space and for any other purposes, expressed or implied, in these Covenants.

Section 3. Amount and Approval of Assessments.

The maximum annual assessment per lot or unit which may be made by the Association in every calendar year shall not substantially exceed the projected and budgeted actual and reasonable costs to be incurred by the Association during the coming year in carrying out the purposes herein set forth, and may include a reasonable reserve for contingencies. The amount of the annual assessments shall be fixed by the Board of Directors of the Association in the following manner:

At each annual meeting of the members of the Association, the Directors shall present a proposed budget of the estimated expenses for the Association for the coming year to the members for review, discussion, amendment, comment and approval. The members shall approve or amend the proposed budget by a majority vote of the members present or voting by proxy. After the annual meeting, the Board of Directors shall set the amount of the assessments and the date(s) due for the coming year to cover the budget approved in the manner herein set forth.

Section 4. Special Assessments for Capital Improvements and Reserve Assessments.

In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or other capital improvements on the properties and open space, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of thirty percent (30%) or more of all of the votes of the members who are present at a meeting duly called for that purpose. Special assessments may be levied to be paid over one or more years.

The Association may levy reserve assessments for the replacement and upkeep of the improvements enjoyed by the Association members. Reserve assessments need not be levied against all lots during any budget cycle provided that any such assessment shall have the approval

of thirty percent (30%) or more of all of the votes of the members being assessed, who are present at a meeting duly called for that purpose.

Section 5. Rate of Assessment.

Annual assessments shall be fixed by the Directors at a uniform rate. Assessments may be collected on a monthly, quarterly or annual basis, or any other regular basis as shall be determined by the Board of Directors of the Association. Special assessments shall be fixed at the same rate for each lot affected by the special assessments.

Section 6. Date of Commencement of Annual Assessments: Due Dates.

Except as herein provided, the annual and special assessments provided for herein shall be due on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessments against each lot at least thirty (30) days in advance of the due date of each annual assessment, and at least ninety (90) days in advance of a special assessment and reserve assessments. Written notice of the annual and special assessments shall be mailed or personally delivered to every member subject thereto, at their last known mailing address.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the owners obligated to pay the same or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the open space or by abandonment of their lot.

Upon delivery of the notice of assessment to the owner, the assessment shall be a lien upon the owner's lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty (30) days after the recording of the notice of lien, the Association may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property. The Association is entitled to collect during an action for delinquent assessments any and all reasonable attorney's fees and costs accrued prior to and in association with the collection of delinquent assessments.

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Section 8. Sale or Transfer of a Lot or Unit.

The sale, transfer or encumbrance of any lot shall not affect the assessment lien if recorded in the records of Gallatin County, Montana, or the personal liability of the owner responsible for the assessment. No sale or transfer to a third party with actual or constructive knowledge of an assessment shall relieve such new owner from the liability for any outstanding assessments, or from any assessments thereafter becoming due, or from the recorded lien thereof. A person or

entity purchasing a lot shall be responsible for checking with the Association for any outstanding assessments against said lot before the closing upon the purchase.

Section 9. Assessment as lien

A portion of the assessments levied by the Board of Directors of the Association shall become a lien on the lots within the Property in the event the taxes become delinquent.

**ARTICLE IV
ASSOCIATION OBLIGATIONS**

Section 1. The Association shall be responsible for the operation, maintenance and repair of:

- improvements,
- roads/streets,
- parking including snow removal,
- storm water detention basin,
- drainage/infiltration facilities,
- sewer and water services for the Association controlled areas,
- site lighting maintenance and repair,
- site lighting electrical bills and costs,
- open space repair and hardscape and landscape maintenance,
- taxes assessed against areas for parking and open space, and
- for any other purposes, expressed or implied, in these Covenants.

Section 2. Insurance of the Board of Directors

The Association shall be responsible for liability insurance in an amount to be determined by the Board of Directors of the Association.

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**ARTICLE V
PROPERTY USE**

Section 1. Allowed Uses

The subdivision property is zoned M-1 Industrial. All uses, permitted and conditional are allowed to be developed on each lot or tract within the Nelson Meadows shall comply with the M-1 zoning together with permitted and conditionally permit uses authorizes uses; any limiting, directing or prohibiting covenants and the Design Guidelines. Whenever these covenants and the zoning conflict, the more restrictive shall prevail and be enforced.

No alteration of the soils, construction, destruction and change may be made to any portion of any lot or tract without approval from the Nelson Meadows Architectural Review Committee (“ARC”) in compliance with these covenants, the Design Guidelines and the City of Bozeman.

Uses may be changed, altered, amended, reduced or eliminated by Declarant during the first twenty (20) years after recordation of these covenants.

ARTICLE VI CITY OF BOZEMAN REQUIRED COVENANTS

Any covenant which is included herein as a condition of preliminary plat approval and required by the City Council may not amended or revoked without the mutual consent of the simple majority of owners in accordance with the amendment procedures in these covenants and the governing body of the City of Bozeman.

ARTICLE VII ARCHITECTURAL & LANDSCAPE REGULATIONS

Section 1. Architectural and Landscape Design Guidelines and Review Process

All structures & landscaping shall be built and installed in conformance with the *Design Guidelines and Review Process*, a separate document, adopted to govern the building of any and all structures as well as govern all landscaping requirements in all phases of the Nelson Meadows Subdivision.

No construction shall commence without the written approval of the ARC. Each structure shall be designed and constructed in compliance with the *Design Guidelines and Review Process*, including but not limited to, location, square footage requirements, color, building materials, landscape and all requirements of the *Design Guidelines and Review Process*.

No landscaping shall be installed or removed without the written approval of the ARC. Landscaping should begin no later than the beginning of the first growing season after completion of the structure and should be substantially completed by the end of the second growing season.

The procedures for application, consideration and approval of any building and structures and landscaping are set forth in the *Design Guidelines and Review Process*.

The *Design Guidelines and Review Process* are incorporated by reference herein and are enforceable as if they are a part of this document. The Design Guidelines may be amended pursuant to the provisions set forth in that document.

ARTICLE VIII TERM AND ENFORCEMENT

Section 1. The term of the provisions of these Covenants shall be binding for a term of ten (10) years from the date of these Covenants and may be modified, altered or amended during that period by the Declarant or Declarant's successor at Declarant or Declarant's successor's option or upon vote of the owners of eighty percent (80%) of the lots or Unit. After the initial ten (10) year period, the Covenants shall continue amended, revoked or terminated, in writing by the owners of eighty percent (80%) of the Owners of lots or Units.

Section 2. Enforcement of these Covenants shall be by proceedings either at law or in equity against any person or persons violating, or attempting to violate, any Covenant; and the legal proceedings may either be to restrain violation of these Covenants, to recover damages, or both.

Should any lawsuit or other legal proceeding be instituted by the Association or an owner against an owner alleged to have violated one or more of the provisions of these Covenants and should the Association or owner enforcing the provisions of the covenants be wholly or partially successful in such proceedings, the offending owner shall be obligated to pay the costs of such proceeding, including reasonable attorney's fees for all time associated with the action.

Section 3. The failure of Declarant, the Association or an owner, to enforce any Covenant or restriction contained herein shall not be deemed a waiver or in any way prejudice the rights to later enforce that Covenant, or any other Covenant thereafter, or to collect damages for any subsequent breach of Covenants.

The waiver or approval of a variance of a Covenant provision by the Board of Directors, or non-action of the Association or Declarant in the event of a violation of a Covenant by a particular owner or lot, shall not be deemed to delete or waive the Covenant or enforcement thereof as it pertains to other owners or lots.

Section 4. Invalidation of any one of these Covenants by judgment or by Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

Section 5. In any conveyance of the above-described real property or of any lot thereon, it shall be sufficient to insert a provision in any deed or conveyance to the effect that the property is subject to protective or restrictive Covenants without setting forth such restrictions and Covenants verbatim or in substance in said deed nor referring to the recording data. All of the above-described real property and lots shall be subject to the restrictions and Covenants set forth herein, whether or not there is a specific reference to the same in a deed or conveyance.

Section 6. A breach of any of the foregoing restrictions or Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any lot or portion of the real property or any improvements thereon. However, the Covenants shall be binding upon and shall inure to the benefit of any subsequent owner whose title thereto was acquired by foreclosure, trustee sale or otherwise.

Section 7. Except for and exclusive of covenants required by the City of Bozeman, after the initial ten (10) year term for these Covenants, the provisions of these Covenants may be changed or amended or additional Covenants added, in whole or in part, by the Association upon approval of eighty percent (80%) of the members of the Owners' Association at a meeting duly noticed and called for this purpose; provided that, the easements for roads, utilities and common areas shall not be changed without the unanimous consent of all of the owners affected by the change.

The President or Vice-President shall execute and record the amendment, change or addition with the Clerk and Recorder of Gallatin County, Montana.

Any change of these Covenants shall be effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. Any change in these Covenants shall not affect existing structures and uses of the lots or units.

IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this _____ day of _____, 2018.

DECLARANT:

BarTimCo Properties, LLC

By: _____
Its: _____

STATE OF _____)
: ss.
County of _____)

On this _____ day of _____, 2018, before me, the undersigned, a Notary Public of the State of Montana, personally appeared _____ being the _____ of BarTimCo Properties, LLC, known to me to be the person that executed the within instrument on behalf of the limited liability company and acknowledged to me he executed the same.

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

NOTARY PUBLIC for the State of _____
Printed Name: _____
Residing at _____
My Commission expires _____