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Jeff Martin Clerk & Recorder, Yellowstone MT

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DIAMOND FALLS SUBDIVISION

THIS DECLARATION is made this 13 day of November, 2015, by **DIAMOND FALLS, INC.**, a Montana corporation, of 3472 Stone Mountain Circle, Billings, Montana 59106 ("Declarant").

RECITALS:

A. Declarant is the owner of all of the following described real property and all portions thereof, located in Yellowstone County, Montana (the "Property"):

> **Lots 1 through 5, Block 1, Lots 1 through 10, Block 2, Lots 1 and 2, Block 4, Lots 1 through 7, Block 5, Lots 1 through 9, Block 6, Lots 4 through 26, Block 7, of Diamond Falls Subdivision, Yellowstone County, Montana, according to the official plat thereof on file in the office of the Clerk and Recorder of Yellowstone County, Montana under Document No. _____.**

B. Declarant proposes that the Property be developed, sold and improved pursuant to a common plan of development, and desires to place covenants, conditions and restrictions upon the Property for the benefit of the owners of all of the Property or any part thereof.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

1.1. "Association" shall mean Diamond Falls Homeowners Association, Inc., a Montana nonprofit corporation, and its successors and assigns.

1.2. "Board" shall mean the duly elected and qualified members of the Board of Directors of the Association.

1.3. "Common Facilities" shall mean those areas which are to be improved, repaired and maintained by the Association for the benefit of all Owners and all tangible and intangible personal property at any time owned or controlled by the Association for the common use and benefit of the Owners.

1.4. "Declarant" shall mean Diamond Falls, Inc., a Montana corporation, and its successors and assigns.

1.5. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Diamond Falls Subdivision, as it may from time to time be amended or supplemented.

1.6. "Design Review Committee" or **"DRC"** shall mean the design review committee appointed by the Declarant or the Board as provided herein whose function is to review the plans, elevations, designs and locations of structures, landscaping, and other improvements to be constructed or erected on any Lot.

1.7. "Design Standards" shall mean the guidelines and standards for houses, improvements or other structures to be constructed or installed on any Lot in the Subdivision as set forth in this Declaration, as it may from time to time be amended or supplemented.

1.8. "Lot" shall mean a lot as designated on the plat of the Subdivision recorded from time to time in the office of the Clerk and Recorder of Yellowstone County, Montana.

1.9. "Mortgage" shall mean a Mortgage, Deed of Trust or Trust Indenture.

1.10. "Mortgagee" shall mean a Mortgagee under a Mortgage, as well as a Beneficiary under, or holder of, a Deed of Trust or Trust Indenture.

1.11. "Occupant" shall mean a lessee or licensee of an Owner, or any other person or entity (other than an Owner) in lawful possession of a Lot and all or any improvements thereon with the permission of the Owner.

1.12. "Owner" shall mean any person or entity which is the record owner of fee simple title of any Lot, including buyers under a contract for deed, but excluding any entity or person who holds such interest as security for the payment of an obligation, other than a contract seller, Mortgagee, or other security holder in actual possession of a Lot.

1.13. "Subdivision" shall mean and refer to Diamond Falls Subdivision, and all Lots and Common Facilities contained therein, all of which are subject hereto.

1.14. "Screened from View" shall mean, with respect to any given object on a Lot, that the object is screened by a fence, hedge or other decorative improvement such that the object is not or would not be visible to a person six (6) feet tall, standing on any part of any adjacent Lot or other property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II
SUBJECT PROPERTY

2.1. General Declaration. Declarant hereby declares that all of the Subdivision more particularly described above and all Lots therein are, and shall be, conveyed, hypothecated,

encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration. All of the covenants, conditions and restrictions set forth herein are declared and agreed to be in furtherance of a general plan for the Subdivision and for improvement and sale of the Subdivision, and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision and every part thereof. All of the covenants, conditions and restrictions shall run with all of the Subdivision and the Lots therein for all purposes and shall be binding upon and inure to the benefit of Declarant and all Owners, Occupants, and their successors in interest as set forth in this Declaration.

2.2. Subdivision of Lots. None of the Lots within the Subdivision shall be subdivided, resubdivided, split, altered or reduced in size in any way or manner whatsoever. The foregoing shall not prohibit an adjustment or relocation of common boundary lines between two (2) or more of the Lots, provided that (a) no additional tracts or lots are created in connection therewith, and (b) each such tract or lot affected by such adjustment or relocation has an area (in square feet) equal to at least ninety-five percent (95%) of the area contained in such tract or lot as set forth and depicted on the original plat of the Subdivision.

ARTICLE III
HOMEOWNERS ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner of a Lot in the Subdivision shall, by acceptance of a deed to such Lot, be a member of the Association and shall be irrevocably subject to assessments by the Association. Membership shall be appurtenant to and may not be separated from ownership of the Lot.

3.2. Classes of Members. The Association shall have one class of members, with the privileges and obligations of such membership defined and set forth in the Articles of Incorporation and Bylaws of the Association.

3.3. Voting Rights. The Owner or Owners shall be entitled to one (1) vote of each Lot owned. The vote for any Lot owned by more than one (1) person shall be exercised as such co-owners may among themselves determine, but in no event shall the vote with respect to any Lot exceed the total of one (1) vote per Lot as herein provided.

3.4. Articles and Bylaws. This Article III is intended by Declarant to summarize the privileges and obligations of an Owner as a member of the Association. The Declarant, for itself, and each Owner of a Lot by acceptance of a deed thereto, shall be bound and shall abide by the additional terms, conditions and obligations set forth in the Articles of Incorporation and the Bylaws of the Association, as the same may be amended from time to time.

ARTICLE IV
ASSESSMENTS OF THE ASSOCIATION

4.1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special 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 Lot against which each such assessment is made.

Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Owners and Occupants of the Subdivision, and for the establishment, improvement and maintenance of the Common Facilities situated within the Subdivision.

4.3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Facilities, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty percent (60%) of the votes entitled to be cast by members who are voting in person or by proxy at a meeting duly called for that purpose. Nothing stated herein shall restrict the right of the Association to provide for the repayment of the special assessment over a term of months or years subsequent to the date of such assessment, and upon terms and conditions it deems appropriate, including the collection of interest on the deferred balance.

4.4. Notice and Quorum for Action. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 shall be given to all members not less than ten (10) days in advance of the meeting, or if given by certified mail, not less than thirty (30) or more than sixty (60) days in advance of the meeting. At the meeting so called, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, then the Association may not act or proceed upon the proposed action for which notice was given, but nothing herein shall preclude the Association from calling another meeting at any time (subject to the foregoing notice requirements) for the same purpose or purposes.

4.5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

4.6. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Facilities from Declarant to the Association, and shall be assessed on a calendar year basis. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

4.7. 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 twelve percent (12%) per annum, but in no event to exceed the maximum rate permitted under Montana law. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against such Owner's Lot in the same manner as a mortgage on

real property, and the Association shall be entitled in any such foreclosure proceedings to recover its costs, expenses and reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Facilities or by abandonment of such Owner's Lot.

4.8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. The sale or transfer of any Lot shall not affect the assessment lien whether such lien arises prior to such sale or transfer, or thereafter becomes due. However, the sale or transfer of any Lot pursuant to foreclosure proceedings of such first Mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer, but shall not relieve such Lot from liability for any assessments thereafter accruing or becoming due or from the lien thereof.

ARTICLE V
BUILDING AND USE RESTRICTIONS

5.1. Residential Use; Permitted Buildings and Structures. All buildings and structures shall be used solely for private residential purposes, and no building or structure shall be erected, altered, placed or permitted to remain on a Lot other than the following:

(a) One (1) single family residence with a private attached or detached garage. No carports shall be permitted on any Lot.

(b) One (1) detached accessory building which must be approved in advance (i.e., prior to the commencement of construction) by the DRC.

No Lot or any building or improvement erected thereon shall at any time be used for the purpose of any trade, profession, manufacturing or business of any description; nor shall any Lot or building be used for hospitals, duplexes, apartment houses, or any other multiple dwelling houses. No outhouse or privy shall be permitted or maintained on any Lot, except that a chemical toilet shall be permitted on a Lot during the time a house is being constructed thereon. Notwithstanding anything to the contrary, an Owner may use a portion of such Owner's house as a home office or in-home business provided that such Owner's activities are not obvious to the public from the street (no signs) and do not interfere with the quiet enjoyment of any other Owner or Occupant.

No garage or other outbuilding shall be used for residential purposes.

5.2. Buildings Must Be New. Any building or house erected on any Lot shall be of new construction, and no mobile homes, trailers, old buildings or manufactured homes shall be placed or moved onto a Lot.

5.3. Temporary Residence. No trailers or other living convenience shall be kept on a Lot before or after construction of a house, nor shall any trailer or other living convenience be used for temporary living quarters at any time. No basement or structure on any Lot may be used for dwelling purposes until after its area, as defined by the foundation, has been completely enclosed according to the Plans (as defined below) and until it has been substantially completed, with sanitary facilities and utilities permanently installed.

5.4. Commercial Vehicles and Trucks. No commercial vehicles, trucks, or equipment shall be parked or stored on any Lot or Lots or on the street adjacent to any Lot or Lots except for the

purposes of performing a service for a resident and in that event the vehicle shall not remain parked for a period of more than ten (10) hours.

5.5. Parking. Trailers, boats, snowmobiles, motor homes, recreational vehicles, junked or non-operational automobiles or other mobile devices shall not be parked in a driveway for a period exceeding five (5) consecutive days or thirty (30) days total in any one (1) calendar year. Trailers, boats, snowmobiles, motor homes, recreational vehicles, junked or non-operational automobiles or other mobile devices shall be parked and stored inside a permitted garage or accessory building or on a concrete pad on the non-street side of the garage or to the back of the Lot. Improperly parked vehicles may be removed at the expense of the owner of any such vehicle.

5.6. Animals/Pets. Except as otherwise provided herein, no insects, wild animals, cattle, pigs, poultry, goats, horses or livestock of any kind shall be raised, bred or kept on any Lot. Domesticated dogs, cats, birds or other household pets (collectively, "Pets") which do not unreasonably bother or constitute a nuisance to other Owners may be kept, provided they are not kept, bred or maintained for any commercial purpose. Notwithstanding anything to the contrary, no Owner or Occupant shall have more than two (2) dogs and two (2) cats. All Pets must be restricted to their Owner's Lot except when restrained by a leash in the company of such Owner. The Board will give Owner of a Pet that creates a nuisance or disturbance a single warning. Subsequent occurrences may result in the levying of a fine or Assessment against such Owner by the Board. Owners shall promptly clean up after their Pets and shall be responsible for repair of all damage caused by their Pets. If an Owner fails to do so, the Board may pay for having the cleanup or repairs done and assess the cost to such breaching Owner as a common expense payable only by such Owner. The Board may at any time limit the number of Pets on any Lot, and may withdraw permission for any Pet from any Owner who violates the restrictions of this Section 5.6.

5.7. Maintenance. Each Lot and the exterior appearance of all building or improvement erected thereon shall be maintained in a clean, neat and orderly condition at all times.

(a) **General Maintenance.** Each Owner shall maintain the exterior of all buildings and improvements situated on such Owner's Lot and the accompanying landscaping and grounds in good repair and shall keep the buildings and other improvements painted or stained, lawns cut, shrubbery trimmed, rubbish and debris removed, and otherwise maintain the same in a neat and aesthetically pleasing condition. All damage to any exterior part of any building or other improvement situated on the Lot shall be repaired as promptly as is reasonably possible.

(b) **Unsightliness/Blight.** Any exterior or condition on any building or other improvement situated on a Lot which, in the sole discretion of the Board, creates an unsightly or blighting influence shall be corrected or removed, as the case may be, by Owner, upon request by the Board notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration.

In the event any Owner shall fail or neglect to provide such exterior maintenance, the Association shall notify such Owner in writing specifying the failure and demanding that it be remedied within thirty (30) days. If such Owner shall fail or refuse to provide such exterior maintenance within the thirty (30) day period, the Association or its designated agents may then enter such Lot and provide required maintenance at the expense of Owner. The full amount shall be due and payable within thirty (30) days after the Owner is billed therefor. Such entry on the Lot by the Association or its agents shall not be deemed a trespass.

5.8. Nuisances. Nuisances or offensive or unlawful activities shall not be carried on, nor shall anything be done on any Lot which may become an annoyance or nuisance to the other Owners in the Subdivision. No unsightly object or sign (except for one "For Sale" sign per Lot) shall be erected, placed, or permitted to remain on any Lot.

5.9. Noxious Weeds. Each Owner shall control noxious weeds on such Owner's Lot. The Association shall control noxious weeds on the Common Facilities.

5.10. Garbage; Storage Tanks. No trash, debris, organic or inorganic waste shall be permitted to accumulate on any Lot, but shall be promptly and efficiently disposed of, and no vacant or other Lot shall be used as a dump ground or burial pit. Except on trash collection days, the only allowable outside trash or refuse cans or containers shall be those which are Screened from View by a structure approved by the DRC. Outside incinerators shall not be permitted. No storage tanks for fuel are permitted in the Subdivision.

5.11. Clothes Lines. No outdoor clothes lines shall be permitted on any Lot or on the Common Facilities.

5.12. Extraction of Materials. No mining, drilling for oil or natural gas or extracting gravel or sand or other earth materials shall be permitted within the Subdivision.

5.13. Public Utilities. Each Owner of a Lot is required to connect, at Owner's expense, to water supply for household purposes, sewer, and other public utilities at the time the same become available. No structure of any kind shall be erected, permitted or maintained on the easement for utilities as shown on the plat of the Subdivision. No Lot shall be used for residential purposes prior to compliance with all governing laws and regulations relating to water supply, sanitation, sewage disposal, and air pollution.

5.14. Water Rights. There are no ditch rights conveyed with any Lot.

ARTICLE VI
DESIGN REVIEW

6.1. Purpose. The following protective covenants are designed to provide a uniform plan for the development of the Lots and the Subdivision. The intent of Declarant in establishing these covenants is to create and maintain a residential area with an atmosphere and charm entirely compatible with the natural environment of the Property, and further to provide every practical and legal means to safeguard and protect the interests of all Owners and the stability of the Subdivision.

6.2. Design Review Committee. Except as provided herein, the DRC shall consist of three (3) members appointed by the Board. At least two (2) of the three (3) members of the DRC shall be members of the Association or members of Declarant, and it is suggested that at least one (1) of the members have professional qualifications in the area of architecture, design or land use planning. Notwithstanding the foregoing, until such time as forty (40) Lots have been improved with the construction of a house thereon, Duke Cherpeski, Shane Fuchs and Jason E. Hertz are hereby appointed to the DRC.

The DRC shall have the right to make exceptions to the Design Standards as it shall deem necessary and proper, and shall have the authority to augment, amend, or otherwise modify the Design Standards from time to time, without consent of any Owner and may authorize exceptions to the

Design Standards as it sees fit. A majority of the members of the DRC must consent, in writing, to the new or modified standards.

New or modified Design Standards shall not be effective until they are recorded with the Yellowstone County Clerk and Recorder, and a copy given or sent to each Owner.

The DRC shall not have the right to make exceptions to, or modify, any of the provisions of this Declaration except as otherwise provided in this Section 6.2 with respect the Design Standards.

6.3. Requirement of Review by DRC. No construction, improvement, or alteration of or affecting the external appearance of any main buildings, secondary buildings, fences, walls, railings, artifacts, or similar improvements, and no landscaping, wire, pipe, utility line, well, driveway or walkway shall be made, erected, altered, placed or permitted to remain upon any Lot until Plans showing the design, location, material, color and exterior finish shall have been submitted to and approved in writing by the DRC. In considering applications for approval of the Plans, the DRC will regard compatibility with site characteristics as the primary and foremost design objective. The DRC shall be entitled to charge a reasonable fee with respect to the review of any Plans.

6.4. Review Application. Before beginning any project which is subject to the review requirement set forth in Section 6.3, Owner shall submit to the DRC two (2) sets of Plans (as defined below) for the proposed construction, improvement, or alteration. For purposes of this Declaration, the term "Plans" mean the following materials, if applicable, to the proposed construction, improvement, or alteration of the Lot:

(a) **Site Plan.** A site plan showing (1) the location of all improvements to be constructed including, but not limited to, buildings, fences, walls, driveways, parking areas, utilities, outbuildings and decks; (2) existing topography and contour in relation to the proposed construction, improvements, or alterations and cut and fill excavation requirements; and (3) other pertinent information relating to the proposed construction, improvements, or alterations.

(b) **Building Plan.** A building plan which shall consist of: (1) the building dimensions; (2) elevation drawings or sketches of the exterior of the building(s); and (3) information concerning the exterior of the building(s) which shall include samples of all exterior colors, materials and finishes to be used.

(c) **Landscape Plan.** A general landscape plan and/or drawings of proposed landscape features including planting areas, location of existing trees or proposed removal of such, proposed plant types and drainage plans. The landscape plan can be incorporated into the site plan.

(d) **Other Information.** The DRC may require Owner to furnish additional specifications, drawings, material samples or such other information as the DRC, in its sole discretion reasonably exercised, shall deem necessary or appropriate for the purpose of assisting it in reviewing the Plans.

6.5. Approval or Disapproval of Plans by Design Review Committee. In reviewing the Plans and in reaching a decision of approval or disapproval thereof, the DRC shall use its best efforts and judgment to assure that all construction, improvements, or alterations shall produce and contribute to an orderly and aesthetically complimentary design and appearance, of a quality required

to maintain the Subdivision as a first class residential development. Approval by the DRC shall be based, among other things, on the:

(a) Design Standards;

(b) Conformity of Plans to this Declaration;

(c) Conformity and harmony of external design with neighboring improvements;

(d) Effects of location and use of proposed improvements on neighboring Lots and the Common Facilities;

(e) Relation of improvements and finished ground elevations to existing topography and grades;

(f) Landscaping of the Lot in relation to that of neighboring Lots;

(g) Facing of the main elevation with respect to adjacent Lots and the Common Facilities; and

(h) Overall aesthetics of the Subdivision.

Because the review process includes judgments about aesthetics by the DRC and because the aesthetic considerations cannot be clearly defined in this Declaration, the decisions of the DRC will necessarily be subjective in nature. Each Owner, by acceptance of a deed to a Lot, agrees to accept the aesthetic decisions of the DRC as final and binding, and waives any right to challenge those decisions through legal action.

The DRC may act by a majority of its members and any authorization or approval made by it must be signed by a majority of the members thereof. The decision of the DRC may be in the form of an approval, a conditional approval or a disapproval of the Plans and it shall be in writing, dated and signed by two (2) members of the DRC. A copy of the decision shall be mailed to Owner at the address provided by such Owner with the Plans. The DRC shall take action to approve or disapprove the Plans within fourteen (14) days after they have been submitted to it.

Any Plans that are approved in writing by the DRC shall then permit Owner to commence construction in accordance with the Plans, but any deviation from the Plans which in the judgment of the DRC is a substantial detriment to the appearance of the structure or of the surrounding area shall be corrected to conform with the Plans as submitted.

6.6. Variances. The DRC may waive or grant variances to the Design Standards, when, in the sole discretion of the DRC, circumstances such as topography, natural obstructions, aesthetics, environmental considerations or hardship may so require, or when a proposed improvement is not in strict conformance with the Design Standards, but meets the aesthetic intent of the Design Standards.

6.7. Changes to Approved Plans. Owners must obtain prior written approval of the DRC to any change to approved plans if those changes affect the exterior of a building or the landscaping or other exterior improvements.

6.8. Contractors. The DRC shall have the right to disapprove the choice by an Owner of any construction contractor for the building or installing of any building, house, guest house, outbuilding, shed, pen, kennel, porch, patio, gazebo, excavation, landscaping, bridge, fence, wall, or any other structure of any kind on any Lot; provided, however, that the grounds for such disapproval shall be only one (1) or both of the following:

(a) A reasonable belief that the contractor is not financially responsible; and/or

(b) Nonconformance by the contractor with approved Plans when previously undertaking construction work on any Lot.

This Declaration establishes no duty upon Declarant or the DRC to investigate the financial responsibility of any construction contractor or the performance by the contractor of construction work, and this Declaration vests no right in Owners, any contractor, or other third party as against Declarant, the DRC or the Association with respect to approval or disapproval of construction contractors.

6.9. Non Liability. Neither the DRC nor any member thereof, or Declarant or any member, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or other person for any loss, damage or injury arising out of or connected with the performance by the DRC members of their duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve a Plan or Plans. The aforementioned parties assume no responsibility for:

(a) The structural capacity, safety features, or building code compliance of any improvement;

(b) Whether or not the location of a proposed improvement is free from possible geologic or natural hazards, or other possible hazards caused by conditions occurring either on or off the subject property;

(c) The internal operation or functional integrity of any improvement; or

(d) Any zoning ordinance or building code violations.

An Owner agrees, by acceptance of a deed to a Lot and by submission of Plans to the DRC for approval or disapproval, not to bring any action or suit against the Association, the Board, members of the DRC, or Declarant or its officers, member, employees, agents, successors or assigns to recover damages as a consequence of the design review process set forth in this Article VII.

6.10. Zoning Requirements. Owners are alerted that it is their obligation to ascertain and comply with all applicable zoning ordinances, or obtain a variance from those ordinances. This Declaration does not relieve Owners of the obligation to also comply with applicable zoning ordinances, and the DRC will not review Plans for compliance with those ordinances.

ARTICLE VII
DESIGN STANDARDS

7.1. Design of Buildings.

(a) **Traditional Design.** The design of all buildings shall be traditional in attitude, the use of traditional forms and design elements (e.g. pitched roofs, columns and arches, trellises, dormers, etc.) is encouraged. There is no requirement for a literal interpretation of a traditional style, but the design of all buildings should address the environment and houses customary to the community.

(b) **Exterior Walls.** Exterior walls of all buildings shall be sided with brick, stone, clapboard, wood, or stucco, although the DRC shall have the right to approve or disapprove the appropriateness of the material choice for each particular situation, and may expand the list of allowable materials, as new materials become available. No aluminum or vinyl siding shall be allowed. No log homes shall be permitted in the Subdivision.

(c) **Roof.** All roofs of all buildings shall be pitched and shall be clad in composite shingles or slate or a slate-composite material or metal, provided that another roof employing other materials will be permitted if architecturally harmonious. Chimneys shall be clad in brick or stone. No steel roofs shall be permitted in the Subdivision.

(d) **Accessory Buildings and Secondary Structures.** All accessory buildings and secondary structures on any Lot shall match the external design and be made of the same basic external material as the primary structure on such Lot. Notwithstanding anything to the contrary, no accessory buildings and secondary structures erected on a Lot shall in the aggregate have a square footage which exceeds seventy-five percent (75%) of the square footage of the ground (first) story/level of the house which is located on such Lot and no side wall of any such accessory building or secondary structure may not exceed eleven feet (11') in height.

(e) **Minimum House Sizes.** The minimum sizes for houses in the Subdivision are as follows:

(1) Rancher with basement - 1,650 square feet above ground;
(2) Rancher on slab or with crawl space only – 1,650 square feet above Ground;
(3) Two story – 1,350 square feet on ground (first) story and total of 1,750 square feet above ground; and
(4) Multi-level – 1,650 square feet above ground

For purposes of this Section 7.1(e), square footage shall equal the interior square footage of each floor or level of a house excluding full or daylight basements, garages and porches.

(f) **Attached Garage Requirement.** Each house in the Subdivision shall have a minimum of a double attached garage with an enclosed floor area within the perimeter of its exterior of not less than 575 square feet.

(g) **Height.** With the exception of a chimney, no portion of a structure shall exceed forty feet (40') in height, without the prior written approval from the DRC. All antenna or rails shall be attached to a house or other permissible structure and shall not protrude in height above the highest point of the structure to which it is attached. Owners are

alerted that the maximum height permitted by these Design Standards may exceed the maximum allowed by applicable zoning ordinances.

7.2. **Placement of Houses.** A house constructed on a Lot shall be erected no closer than thirty feet (30') feet to the front Lot line, and each house shall be so located on the Lot so that there is at least ten feet (10') between the exterior wall of the house, including the attached garage, and the property lines of the adjoining Lots on all sides. Notwithstanding anything to the contrary, on cul-de-sac Lots, the minimum side setbacks shall be ten feet (10') and the minimum rear setbacks shall be twenty feet (20').

7.3. **Color.** The exterior colors of buildings should be subdued in intensity, with color tones tending toward the neutral end of the value scale and all colors must be approved in advance by the DRC. The DRC shall have the right to refuse to approve the color of any paint or stain which, in its sole discretion, is inconsistent with the color scheme, or may detract from the value, of the other houses located in the Subdivision or which color is not suitable or desirable for aesthetic or other reasons. After initial construction, changes to the exterior color of any building must be approved in advance by the DRC.

7.4. **Fences.** Within thirty feet (30') of any street in the Subdivision, any fence, solid wall or hedge shall not be over six feet (6') in height. Any side fence or any rear fences, and any side wall or any rear wall (except the wall of the building constructed on any Lot), shall not be over six feet (6') in height. Fences are required to be constructed with PVC plastic and/or natural or cultured stone which is earth tone in color. Notwithstanding anything to the contrary, fences which are erected adjacent to Austrian Pine Drive must be made of tan PVC plastic. White PVC plastic fences shall not be permitted in the Subdivision. No fence shall be constructed on any Lot until after the height, type, design and location thereof shall have been approved in writing by the DRC.

7.5. **Outside Lighting.** A yard light must be installed ten feet (10') back from the front Lot line. Each yard light shall be a minimum of six feet (6') above ground level and a maximum of nine feet (9') above ground level. Each yard light shall be connected to a photo-cell, which will turn the light on at dusk and off at dawn. The maintenance of each yard light shall be shall be the responsibility of the Owner of the Lot upon which such light is installed.

7.6. **Utility Lines.** All utility lines, cables and pipes shall be placed underground. No overhead lines shall be permitted. Installation of all underground services shall be coordinated to minimize the amount of excavation required. Each Owner is responsible for installation of underground service across such Owner's Lot from the adjacent service pedestal or junction box.

7.7. **Pools and Hot Tubs.** Above ground swimming pools are not permitted, except for children's wading pools. Exterior hot tubs must be screened from adjacent properties and streets. All pumps, filters and equipment for hot tubs must be located and installed so as not to cause a noise nuisance to neighbors and must be Screened from View.

ARTICLE VIII
CONSTRUCTION REQUIREMENTS

8.1. **Design Standards.** All improvements to any Lot shall comply with the Design Standards as set forth in this Declaration, as they may be amended and adopted from time to time by the DRC, unless strict compliance with a standard is waived in writing by the DRC.

8.2. Compliance with Approved Plans. It is the responsibility of Owner to make sure that any and all contractors, subcontractors, material suppliers and others working on an improvement to Owner's Lot to comply with plans approved by the DRC. Failure to comply with approved plans or beginning construction without prior written approval of the DRC may result in fines being levied against Owner, and/or a directive from the Board to discontinue construction. Fines will be assessed to Owner as a common expense payable only by that Owner.

8.3. Time Limit for Starting Construction. Construction of any structure to be erected on any Lot shall be commenced within thirty (30) days after equipment, materials or either to be used in the construction of such structure are moved onto the Lot. No garage or other building whatsoever shall be erected on any Lot until the house to be constructed on such Lot shall have been erected.

8.4. Duration of Construction and Completion of Landscaping. Construction shall be diligently performed from its commencement to completion of the exterior of the building(s) and any necessary improvements to the grounds surrounding and affected by construction of the building(s). In any event, the exterior appearance of the building(s) shall be completed within twelve (12) months after the commencement of construction. Owner of the Lot shall, within a period of twelve (12) months after occupancy of a newly constructed house on the Lot, provide grass and/or other appropriate landscape cover consistent with the approved Plans over all unimproved or disturbed areas of the Lot.

If any structure is begun and is not completed within the time allowed by this Section 8.4, and in the judgment of the DRC is of offensive or unsightly appearance, then the DRC or the Directors, at the option of either, may take such action as may be necessary in its judgment to improve the appearance so as to make the property harmonious with other properties, including completion of the exterior of the structure, installation of screening or covering of the structure or any combination thereof, or similar operations, and the amount of any expenditures made in so doing shall be a lien on the Lot and may be enforceable by an action at law.

8.5. Grading and Excavation. No excavation, except that which is necessary for the construction of improvements shall be permitted on any Lot until such time as the actual construction is to begin; provided, however, that Owner may drill and excavate for the purpose of testing the sub-soil conditions of the Lot prior to construction.

8.6. Material Storage and Removal. All materials stored on-site during construction shall be neatly stacked on the Lot where such materials will be used. Following completion of construction, all excess materials shall be removed from the Lot, Screened from View or store inside the garage or other building.

8.7. Cleanup of Construction Debris. Owners shall require that all construction workers take reasonable measures to contain construction debris, including coffee cups and food wrappers, on such Owner's Lot. Owner must arrange for cleanup of debris on the site and on surrounding areas at least two (2) times per week during construction.

ARTICLE IX
MISCELLANEOUS

9.1. Enforcement. Violation of any restrictions, conditions, covenants or agreements contained in this Declaration shall give to the Association, acting through its directors, the right to enter upon the Lot, and to summarily abate and remove at the expense of the Owner any building,

structure, thing, or condition that may be in, on or upon said Lot contrary to the provisions hereof without being deemed guilty of trespass. The result of every act or omission whereby any restrictions, condition, covenant or agreement is violated in whole, or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law against a nuisance, either public or private, shall be applicable against every such result. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and remedies now or hereafter imposed or available pursuant to this Declaration shall be cumulative and not exclusive. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9.2. Costs of Enforcement. In the event the Association employs an attorney because of a violation by an Owner of one (1) or more of the provisions of this Declaration, or if the Association commences an action for the enforcement of this Declaration or of the lien for assessments and the Association is wholly or partially successful in such action, the offending Owner shall be obligated to pay, on demand, all costs, charges and expenses, including reasonable attorney's fees, incurred by the Association.

9.3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

9.4. Amendment. Any provision in this Declaration may be amended or revoked, and additional provisions added, at any time by a written instrument recorded in the office of the Clerk and Recorder of Yellowstone County, Montana, duly signed and acknowledged by Owners of record of not less than sixty percent (60%) of the Lots subject to this Declaration; provided, however, that so long as Declarant owns any Lot in the Subdivision, then the consent of Declarant shall be required before any provision in this Declaration may be altered or amended, but such consent may be considered in the calculation and determination of the sixty percent (60%) minimum consent requirement.

9.5. Term. The provisions of this Declaration shall be binding for a term of thirty (30) years from the date of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Owners of not less than sixty percent (60%) of the Lots has been Recorded, agreeing to revoke or terminate this Declaration.

[Signature page follows.]

RES 3760849
11/17/2015 12:26 PM Pages: 15 of 15 Fees: 105.00
Jeff Martin Clerk & Recorder, Yellowstone MT

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration as of the day and year first above written.

DIAMOND FALLS, INC.

By:_____
Jason E. Hertz, President

STATE OF MONTANA)
: ss.
County of Yellowstone)

This record was acknowledged before me on November 13, 2015, by Jason E. Hertz, as President of and on behalf of **DIAMOND FALLS, INC.**, a Montana corporation.

Scott M. Heard

[Official Stamp] SCOTT M. HEARD
NOTARY PUBLIC for the
State of Montana
Residing at Billings, Montana
My Commission Expires
September 16, 2018