



DECLARATION
OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BROWNSTONE CONDOMINIUMS PLANNED UNIT DEVELOPMENT
BIG SKY, GALLATIN COUNTY, MONTANA

WHEREAS, Brownstone Development, LLP (hereinafter referred to as "Declarant"), is the owner in fee simple of those certain lands being developed by Brownstone Development, LLP more particularly described as:

Lot 1 of North Fork Creek Subdivision, located in Section 35, Township Six South (T6S), Range Three East (R3E), P.M.M. Gallatin County, Montana;

and

NOW THEREFORE, the Declarant does hereby establish, dedicate, declare, publish and impose upon the premises the following protective covenants (hereinafter referred to as "covenants") which shall run with the land and shall be binding upon and be for the benefit and value of the Declarant, and persons claiming under it, its grantees, successors and assigns (hereinafter referred to as "owners" or "owner"), and shall be for the purpose of maintaining a uniform and stable value, character, architectural design, use and development of the premises and all improvements excepted, and shall hereafter be in existence and full force and effect unless terminated by law or amended as herein provided.

1. OWNERS' ASSOCIATION

- A. BSOA. Declarant and all subsequent owners of each condominium unit shall belong to, and be members of, the Big Sky Owners Association (hereinafter referred to as the "association" or as the "BSOA") and shall be bound by the Articles and By-laws of said association which are incorporated herein by reference. Declarant and all subsequent owners of each condominium unit shall also belong to, and be member of The Brownstone Condominium Homeowner's Association (hereinafter referred to as the "BCHA") and shall be bound by the Articles and By-laws of said association which are incorporated herein by reference.

- B. Architectural Committee. The Architectural Committee of the Big Sky Owners Association (hereinafter referred to as the "architectural committee") shall be responsible for the administration and enforcement of the BSOA covenants.
- C. Building Permits. No building, construction, re-construction, alteration, remodeling, landscaping, parking, fence, wall or other improvement shall be placed, constructed, erected, repaired, restored, reconstructed, altered, remodeled, added to or maintained on any part of the condominium development until building drawings, plans and specifications (which must be prepared by a licensed architect for all construction, reconstruction, alteration or remodeling) and such other information as the architectural committee may reasonably require, including, without limitation, colors, building materials and models, have been submitted to, and approved by, a majority of the architectural committee in writing; nor may the same be commenced until the architectural committee shall have issued a permit allowing for such improvements.

2. **USE**

A. Permitted Usage of Units.

This condominium development shall be used for single family residences only. No further subdivision of the property shall be allowed. No additional condominium units shall be allowed other than what has been provided in the condominium declaration site plan.

B. Designation of Common Areas

- i. BCHA shall have authority and control over all land within the Brownstone Condominium Development, legally described as Lot number one of North Fork Creek Subdivision, and designated as "Common Areas" "Open Space" or "Common Elements." Excepting the land beneath the building footprints, the paved driveways, all remaining land within the Common Areas shall also be designated as "Open Space."
- ii. Membership. Declarant and all subsequent owners shall belong to, and be members of, the BCHA and shall be required to pay fees to the BCHA for all common expenses including but not limited to: any taxes, insurance, and maintenance of the Common Areas within the Brownstone Condominium Development.
- iii. Maintenance. The BCHA shall be responsible for the maintenance of the common areas, including maintenance of the paved areas and landscaping.
- iv. Privacy Areas. Each single family residence shall be afforded a privacy area, known as a Limited Common Elements, that shall extend by the width of the residence from the front of the residence to the street and shall extend by the width of the residence from the rear of the residence to

fifty feet. Said Limited Common Elements area, while controlled by the BCHA, shall be exclusively used by the resident with the exception of any maintenance required on said premises provided by BCHA.

C. Authorized Structures.

The condominium development shall be restricted to single family dwellings as approved by the BSOA and in conformance with these covenants. No detached out buildings or detached garages shall be allowed.

D. Building Envelopes.

Any and all structures to be constructed must be located in areas as approved in the condominium site plan. This provision shall not be amended without prior approval of Gallatin County.

E. Driveways. The access driveway from the condominium development roads shall be at the location designated on the condominium development plat or at an alternate location approved by the architectural committee.

F. Maintenance. Each condominium development unit and all improvements thereon shall be maintained by the owner thereof in a clean, safe and sightly condition. Boats, tractors, vehicles other than automobiles, snow removal equipment, lawn and garden equipment, travel trailers and RV's, horse trailers, etc. shall be kept at all times, other than when in actual use, within enclosed structures.

G. Trails. The location of trails intended for public use for cross-country skiing, hiking are shown on the condominium development plat. These trails are limited to the specific use or used indicated by the legend on the plat. The BSOA shall be responsible for establishing reasonable rules and regulations regarding the public use of these trails so as to not interfere with the owners' right of quiet enjoyment of the premises.

H. Animals. Unit owners cannot stable or graze horses. Domestic animals such as dogs, cats and birds are allowed in this condominium development as pets only and only so long as they do not constitute a nuisance to others. All such animals must at all times remain on the owners' property or, if taken from the owners' property, must be under the owners' control at all times. If the owner fails to control or contain such animals after being so notified by the BSOA, then the BSOA shall have the authority to order the owner to have such animals removed, and if not removed such animals may be seized and destroyed if found loose, away from the owners' property, and not under the owners' control. All refuse and animal feeds shall be made unavailable to bears and other wildlife. Artificial feeding of wildlife is prohibited.

- I. Temporary Structures. No temporary structures, such as trailers, tents, shacks or other similar buildings shall be permitted on any condominium development unit, except during construction as authorized by the architectural committee.
- J. Prohibited Uses. No commercial, industrial, agricultural or similar business activities shall be conducted within the condominium development. The condominium development is for single family residential usage only. However, owners may conduct business as allowed under the Gallatin Canyon/Big Sky Zoning Regulations, "Home Occupations" (Section 28.6). No mining or other mineral extraction activity shall be permitted on the premises.
- K. Signs. No signs or other advertising devices shall be erected or maintained on any condominium development unit except one sign which identifies the owner and one sign which advertises the property as being for sale. The size, design and location of such signs shall be subject to prior written approval by the architectural committee.

3. EASEMENTS

- A. Reservation. Easements for roads, drainage, electricity, telephone, lighting, water, sewer, cable television and all other utilities and recreational trails are hereby reserved as shown on the condominium development plat as well as easements for all of the same except roads and recreational trails along the front, side and rear setback areas of all condominium development units.
- B. Underground Utilities. All utilities, pipe and service lines shall be buried underground.
- C. Road Easements. All road easements as shown on the plat shall include a corresponding easement for drainage, electricity, telephone, lighting, water, sewer, cable television and all other utilities.
- D. Landscaping. Easement areas may be landscaped by property owners so as to enhance their appearance so long as the landscaping does not interfere with the use of the property as an easement.
- E. Restoration. No utility service line or facility shall be installed or replaced without the prior approval of the architectural committee. All easement areas must be restored, at the expense of the utility or service entity doing such work, to as near the condition that existed previous to such work as possible. In the discretion of the architectural committee a bond may be required of the utility or service entity to insure compliance with this provision.

4. CONSTRUCTION

A. Floor Area Requirements. The principal dwelling unit (i.e. single family residence) shall be constructed so as to include not less than two thousand two hundred (2,200) square feet of living space, exclusive of open porches, patios, carports, garages or basements.

B. Building Heights. No building or structure shall exceed thirty (30) feet in height measured from the average level of finished grade.

C. Setbacks.

As allowed under current zoning requirements.

D. Partitions and Combinations.

Units may not be further subdivided or partitioned by the owners thereof. Two or more contiguous whole condominium development units, if owned by the same record owners, may be combined as to constitute one unit, subject to the prior approval of the Board of County Commissioners of Gallatin County, Montana and as allowed by law. It is further provided, that any two or more contiguous whole units, if owned by the same record owners, may be combined for the sole purpose of applying these covenants by the record owners thereof making such election in writing and duly recording the same with the Clerk and Recorder's Office of Gallatin County, Montana.

E. Fences. All fences shall be constructed of materials and design approved by the architectural committee and shall be situated so as to not interfere with the use of public trails shown on the condominium development plat.

F. Completion Time. All construction on any condominium development unit shall be diligently prosecuted to completion and shall, in any event, be completed within twelve (12) months of commencement unless specific written extension is granted by the architectural committee.

G. Cuts and Fills. All cuts and fills shall be re-vegetated as soon as possible with native vegetation.

H. Landscaping. The owner shall make every effort to protect and preserve the native vegetation on the premises and any landscaping or tree removal shall require the prior written approval of the architectural committee.

I. LPG Tank. Should an owner use liquefied propane gas, the tanks may be installed above ground and hidden from view or buried underground if properly coated to protect against galvanic action.

J. Satellite TV Antennas. Satellite TV Antennas (i.e. "dishes") are permitted with the written approval of the architectural committee, but should be situated so as to be screened from public view whenever possible.

5. WATER AND SEWAGE

A. Water Systems.

i. Each residential building shall be connected to the Big Sky water facility. The owner shall obtain permission from the proper authority prior to hooking up to the facility.

ii. Each single family residence within the condominium development will be limited to landscape irrigation of no more than four (4) days per week, two (2) hours per day at a rate no higher than twelve gallons per minute (12gpm) during the months of June, July, August and September.

B. Sewer Systems. Each residential building shall be connected to the Big Sky public sewer facility. The owner shall obtain permission from the proper authority prior to hooking up to the facility.

6. TRASH AND GARBAGE

A. Garbage Disposal. Each residential building shall have mechanical garbage disposal facilities or the equivalent in each kitchen and food preparation area.

B. Trash. No trash, waste, garbage, litter, junk or refuse shall be thrown, dumped or left on any portion of the premises and no burning of the same shall be allowed. Each owner shall provide suitable bear-proof receptacles for the containment and collection of trash, which must be enclosed or screened from public view.

7. NUISANCES

A. Nuisances Prohibited. No noxious or offensive use or activity shall be carried on within the condominium development nor anything done or permitted on or in the premises which shall constitute a public nuisance.

B. Snowmobiles and ATV's. No snowmobiles, ATV's, motorized trail bikes or the like may be operated within the condominium development except for motorized equipment as necessary for maintenance of the public trails.

C. Hunting and Firearms. Hunting is not permitted in the condominium development and no firearms may be discharged with the condominium development.

D. Bells, Chimes and Outdoor Lighting. No bells, chimes or other loud noises will be allowed within the condominium development. No outdoor yard lights will be permitted except in conformance with the Gallatin Canyon/ Big Sky Zoning Regulations "Outdoor Lighting" (Section 28.7).

8. MISCELLANEOUS REQUIREMENTS

- A. The control of noxious weeds is the responsibility of the property owner whether the unit is improved or unimproved, and shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153) and the rules and regulations of the Gallatin County Weed Control District. This covenant shall not be changed or amended without prior approval of Gallatin County.
- B. All structures shall be built in accordance with the Uniform Building Codes, seismic zone standards for the Big Sky area, and the National Fire Protection Association codes.
- C. Flame retardant roofing materials shall be used on all structures in the condominium development.
- D. Spark arrestor screens shall be placed on all fireplace and woodstove chimneys.
- E. Smoke detectors shall be installed on each level of all dwelling units or other habitable structures within the condominium development.
- F. Ornamental trees and shrubs shall not touch any building. Trees shall not overhang roofs near chimneys and flues. No flammable materials shall be stored near buildings.
- G. The artificial feeding of all wild animals, including big game animals, is prohibited.
- H. All garbage shall be stored in bear-proof containers or otherwise made unavailable to bears.
- I. Owners acknowledge that wildlife damage to landscaping may occur and shall accept that risk and not file claims against the Homeowner's Association or any governing body for such damage.
- J. Exterior boundary fences shall not exceed 48 inches in height and shall not be made of wire.
- K. The taking of any wildlife species within the property is prohibited except for catching fish.
- L. Pets shall be controlled by their owner and not allowed to roam within the condominium development.
- M. Students attending the Bozeman School System will be required to travel to the central bus stop at the Big Sky Conoco.
- N. Open space also know as Open Space-Green areas shall be maintained by the Brownstone Condominium Homeowners' Association. This covenant shall not be changed or amended without prior approval of Gallatin County.

- O. Any covenant which is included herein as a condition of preliminary plat approval and required by the County Commissioners may not be revoked without the mutual consent of the owners, in accordance with the amendment provisions contained in these covenants, and of the governing body of Gallatin County.
- P. All roads within the condominium development are to be maintained by the Homeowners' Association.
- Q. A homeowners' association shall be created for this condominium development known as BROWNSTONE CONDOMINIUM HOMEOWNERS ASSOCIATION.
 - i. Membership shall be mandatory for each owner, who must be required by recorded covenants and restrictions to pay fees to the Owners Association for taxes, insurance, and maintenance of common open space, private roads and other common facilities.
 - ii. The Owners Association must be responsible for liability insurance, local taxes, and the maintenance of recreational and other facilities and private roads.
 - iii. The assessment levied by the Owners Association must be able to become a lien on the property.
 - iv. The Owners Association shall have the authority to adjust the assessment to meet changing needs.
 - v. Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the Owners Association and the dwelling units they each own.
- R. All covenants required by Gallatin County shall not be amended or changed without prior approval of Gallatin County.
- S. All construction and development of this condominium development shall be in compliance with the applicable General Development Standards of Section 29 of the Gallatin Canyon/Big Sky Zoning Regulations, including, but not limited to: air quality protection (29.2), animal proof refuse facilities (29.3), lighting (29.7), Satellite Dish Antennas (29.8), Utilities (29.10), and Wildfire Protection (29.11). This covenant shall not be changed or amended without prior approval of Gallatin County.
- T. The covenants shall include by reference the Montana Unit Ownership Act – Condominiums under Montana Statutes chapter 70-23, to the extent the covenants do not supersede or conflict with the statutes.

9. ENVIRONMENT

Owners shall make every attempt to preserve and protect the environment indigenous to the area. Disturbance, destruction or damage to all plant life, all animal life and their natural habitats, streams, ponds, springs, underground aquifers, soils and rocks is strictly prohibited except where absolutely necessary for the replacement or construction of improvements on the land or for the proper and orderly development of

the premises. No existing tree may be cut, removed or voluntarily destroyed by any party including property owners, without obtaining the prior written approval of the architectural committee. Any such removal must be for aesthetic purposes, to promote safety, to facilitate construction or as a part of a landscape plan. All areas not utilized as sites for improvements shall be restored as quickly as possible to their natural condition and replanted with native plant life. All such restoration shall be at the expense of the property owner.

10. ASSESSMENTS

Each unit owner shall pay all assessments levied by the Big Sky Owners Association including any special assessments. Special assessments are those relating to services provided specifically to this condominium development such as snow removal, road paving and road maintenance. Special assessments shall be made equally upon a pro-rate share of each unit affected by the service or improvement.

Unpaid assessments, upon notice thereof being duly filed of record, shall be a lien against the parcel of real property against which such unpaid assessment was made. Such lien may be foreclosed upon by the association in like manner as a mortgage on real property with a right of redemption, which foreclosure proceedings may include the addition of court costs and attorney's fees. The Board of Directors of the association shall first obtain the approval of a majority in interest of the property owners of the condominium development before making any special assessments for capital improvements costing in excess of Two Thousand Dollars (\$2,000.00).

11. AMENDMENTS

- A. Procedure. These covenants, or any portion thereof, may be amended, abandoned, terminated, modified or supplemented at any time by the written consent of the Declarant and of the owners of seventy-five percent (75%) of the privately owned land within the condominium development with one (1) vote for each unit within the condominium development, upon such written consent being duly recorded with the office of the Clerk and Recorder of Gallatin County, Montana.
- B. Certain Covenants May Not Be Amended. Any covenants contained herein which were required by the Board of County Commissioners of Gallatin County, Montana prior to the final approval of the condominium development may not be amended.

12. ENFORCEMENT

- A. General. In the event of any violation or threatened violation of these covenants, any owner of real property with the condominium development, or the board of directors of the BCHA, may enforce these covenants by legal proceedings in a court of law or equity, including the seeking of injunctive relief and damages. In association with legal proceedings or as a separate remedy, the board of directors of the association may enter upon the property in question and remove,

remedy or abate the violation or threatened violation after first having given proper notice and a reasonable opportunity for the violator to take action to comply with these covenants as set forth below.

- B. Notice. Notice, as required herein, shall be in writing and shall be served on the person or entity concerned and shall specify the violation, or threatened violation, identify the property, demand compliance with the terms and conditions of these covenants and shall state the action which will be taken if the violation, or threatened violation, is not abated, remedied or satisfied. If such notice cannot be personally served after a reasonable effort to locate the person or entity to be served, service may be had by posting a copy of the notice by certified mail, return receipt requested, to the last known address or addresses of record of the violator. Such notice must further provide for a period of at least fifteen (15) days from the date of posting and mailing such notice, within which compliance can be had with these covenants before any self-help, abatement, entry or commencement of litigation, as provided hereinabove, can be commenced.
- C. Board Liability. No member of the board of directors of the association shall be liable to any person or entity for the entry, self-help or abatement of a violation or threatened violation of these covenants and all owners or lessees of real property within this condominium development shall be deemed to have waived any and all rights or claims to or for damages for any loss or injury resulting from action taken to abate, remedy or satisfy any violation or threatened violation of these covenants except for loss, injury or damage which results from gross negligence or intentionally wrongful acts.

13. SEVERABILITY

Any judgment, order or decision by a court of competent jurisdiction invalidating any of the covenants, condition and provisions hereof shall not affect in any manner the other covenants, conditions or provisions hereof which shall remain in full force and effect.

14. ACCEPTANCE OF COVENANTS

Every owner or purchaser of real property within the condominium development shall be bound by and subject to all of the provisions of this declaration and every owner or purchaser through their purchase or ownership expressly accepts and consent to the operation and enforcement of all of the provisions of this declaration.

15. COUNTY REQUIRED COVENANTS

Pursuant to the Gallatin Canyon/Big Sky Planning and Zoning Commission's Finding of Fact and Order dated July 13, 2006, the declarant does hereby establish, dedicate, declare, publish and impose upon the premises the following protective covenants. Should any covenants conflict with the following covenants the County Required Covenants shall prevail. All County Required Covenants shall not be amended without County approval.

A. Exterior boundaries' preservation.

All areas within the exterior boundaries of the parcel not part of a structure or covered by permanent impervious surfaces shall be preserved according to the requirement in Section 35.11.C of the Zoning Regulation.

B. Noxious Weeds.

The control of noxious weeds is the responsibility of the property owner whether the unit is improved or unimproved, and shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153) and the rules and regulations of the Gallatin county Weed Control District.

C. Building Envelopes.

Any and all structures to be constructed must be located in areas as approved in the condominium site plan. This provision shall not be amended without prior approval of Gallatin County.

D. Maintaining Open Space.

Open space also know as Open Space-Green areas shall be maintained by the Brownstone Condominium Homeowners' Association. This covenant shall not be changed or amended without prior approval of Gallatin County.

E. General Development Standards.

All construction and development of this condominium development shall be in compliance with the applicable General Development Standards of Section 29 of the Gallatin Canyon/Big Sky Zoning Regulations, including, but not limited to: air quality protection (29.2), animal proof refuse facilities (29.3), lighting (29.7), Satellite Dish Antennas (29.8), Utilities (29.10), and Wildfire Protection (29.11). This covenant shall not be changed or amended without prior approval of Gallatin County.

F. No Further Subdivision.

No further subdivision of the property shall be allowed. No additional condominium units shall be allowed other than what has been provided in the condominium declaration site plan.

Dated this _____ day of _____, 20_____.

Brownstone Development, LLP



By: Randy Brown, General Partner

Notary Statement:



Exhibit H
To
Brownstone Condominium Declaration

BROWNSTONE CONDOMINIUM HOMEOWNERS ASSOCIATION BYLAWS