

Return To:  
Windmill 312, LLC  
37219 Ben Hogan LN  
Billings, Montana 59106

**DECLARATION OF RESTRICTIONS FOR  
WINDMILL FARMS SUBDIVISION, FIRST FILING AND HOMEOWNERS  
ASSOCIATION**

On this \_\_\_\_ day of \_\_\_\_\_, 2018, **WINDMILL 312, LLC**, (hereinafter Developer), being owners and developers of the following described real property an all portions thereof, located in Edgar, Carbon County, Montana, hereby establish and declare the following building and use restrictions all of which shall be applicable to said real property:

- Block 1: Lots 1, 2, 3, 4, 5, and 6;
- Block 2: Lots 1, 2, 3, 4, 5, and 6;
- Block 3: Lots 1, 2, and 3;
- Block 4: Lots 1, 2, 3, and 4;

of Windmill Farms Subdivision, 1<sup>st</sup> Filing, Carbon County, Montana, according to the official plat on file and of record in the office of the Clerk and Recorder of said County, under Document No. \_\_\_\_\_.

Developer places these restrictions upon the Lots for the benefit of the owners of all of the above-described Lots Windmill Farms Subdivision, 1<sup>st</sup> Filing (hereinafter “**WINDMILL FARMS SUBDIVISION**”) and any Lots later subjected to the provisions of this Declaration and for the purpose of protecting the value and desirability of all of said Lots in said subdivision.

Developer expects these Lots to be used for single family housing.

All lots subject to this Declaration are hereafter referred to as the “Lots”. The covenants, restrictions and conditions herein contained shall run with the land and shall be binding on all owners of the Lots and all persons claiming under them. The grantees of any of the Lots (henceforth “Lot Owners”), by acceptance of a conveyance, covenant and agree faithfully to observe and abide by all of said conditions, covenants and restrictions.

## GENERAL RESTRICTIONS

1. Each of the Lots shall be known and described as a residential Lot. Except as otherwise provided below, no structures shall be erected, altered, placed, or permitted to remain on any residential Lot, as aforesaid, other than one single family home with attached or detached garage for two or more cars, storage buildings, and playhouses for children.
2. Noxious or offensive activity shall not be permitted on any of the lots, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.
3. The term "residential", as used herein, shall be held and construed to exclude hospitals and churches and to further exclude professional and commercial uses, and any such usage of this property, except as provided herein, is expressly prohibited. In-home trades, professions, and businesses shall be permitted provided that the Lot owner has no outside employees working in the residence, the business or trade does not increase vehicle traffic to the residence by more than six vehicles per day, round trip, and the in-home business complies with the zoning ordinances of Carbon County. Signs identifying in-home businesses shall not be allowed. Vehicles, equipment, or products used in a trade or business shall not be stored outside on any of the Lots, except that vehicles used by building contractors during construction are permitted.
4. No trailer or garage shall at any time be used as a residence.
5. No swine, poultry, goats, or other livestock shall be permitted on any of the Lots.
6. No animals shall be raised or cared for on a breeding or other commercial basis. Wild animals shall not be kept as pets. The number of household pets may not exceed four, with the maximum number of one species limited to three. Pets remaining enclosed inside, such as fish, may be kept in unlimited numbers. All pets shall be kept under the control of their owner. Lot owners shall promptly clean up after their pets and shall be responsible for any damage caused by their pets. Lot owners shall not keep and shall not permit to be kept on the Lot owner's Lot any pet which is a nuisance to other residents in Windmill Farms Subdivision. Lot owners may install a fenced dog run and dog kennel in their back yards, but said runs or kennels shall not be constructed within 20 feet of any property line.
7. No trash, ashes, or other refuse may be thrown, dumped, or stored outside on any of the Lots.
8. No signs, billboards, posters or advertising devices of any character except subdivision promotion signs, or signs advertising a Lot for sale, shall be placed on any of the Lots. Contractor signs may be displayed during construction of a residence.
9. All garbage cans and receptacles shall be stored underground or on wheeled carts in garages so that the same are out of public view except when wheeled to the point of pick-up on pick-up days.

10. Except for playground equipment similar to that used on school playgrounds, tree houses or other high, dangerous, or homemade play devices for children shall not be constructed or maintained on any of the Lots. New, professionally constructed playhouses for children are allowed.

11. No fence, hedge, wall or other structure shall be erected on the street side of any corner Lot so as to endanger the safe flow of traffic. Neither shall any fence, hedge, wall or other structure extend toward the front of any Lot further than the forward part of the residence which is built on such Lot.

12. The entrance, entrance sign, and their landscaping into Windmill Farms Subdivisions shall be maintained by Windmill Farms Homeowners Association, Inc. Lot owners shall contribute to the Windmill Farms Homeowners Association (HOA) its proportionate share of the maintenance of the entrance, entrance sign, and their landscaping. The initial annual fee per lot is \_\_\_\_\_ after completion of the residence upon the lot; and this fee will not be increased more than 10% per year.

13. The HOA shall manage the irrigation rights for the subdivision irrigation system. The HOA will be responsible for the maintenance and operation of the system. Lot owners will be responsible for the maintenance of their individual irrigation systems from the turnout point on. Lot owners shall contribute to the HOA its proportionate share of the maintenance of the irrigation system. The initial annual fee per lot is \_\_\_\_\_ after completion of the residence upon the lot; and this fee will not be increased more than 10% per year.

14. The HOA shall maintain the private parkland area and associated appurtenances. Lot owners shall contribute to the HOA its proportionate share of the maintenance of the private parkland area. The initial annual fee per lot is \_\_\_\_\_ after completion of the residence upon the lot; and this fee will not be increased more than 10% per year.

15. The roadways will be owned and maintained by Carbon County.

16. No trailer house, boats, motorcycles, motor bikes, touring vehicles, trailers, or recreational vehicles shall be parked or stored on any of the internal roadways within the subdivision. These types of vehicles may be kept on the Lot as long as they are stored in an orderly fashion. No more than two of these type of vehicles shall be stored on the Lot. Vehicles in excess of two shall be stored in an enclosure so that they will be concealed from the view of streets and Lots which are adjacent to the Lot on which they are located.

17. Only underground utility lines shall be used in Windmill Farms Subdivision, except for already existing overhead lines, if any.

18. Basketball hoops or backboards may not be mounted on any residence or garage; or table basketball hoops may be placed on the driveway, and basketball hoops mounted on a permanent stand may be placed in a location adjoining the driveway.

19. Lot owners shall be responsible for paying for any damage they or their families, guests, or tenants cause to the entrance to Windmill Farms Subdivision.

20. All Lot owners shall be obligated to maintain their homes, garages, outbuildings, and yards so that they are clean, tidy, and in good repair. Lot owners shall not permit peeling paint, broken sidewalks or driveways, broken shingles, or any other unsightly condition on their property. Lot owners shall keep their lawns mowed and watered, and they must remove all dead or dying trees and shrubs so that all properties in Windmill Farms Subdivision reflect a high pride of ownership.

21. Lot owners will be responsible for contracting garbage disposal.

## **RESTRICTIONS ON BUILDING**

22. **Drainage and Soil.**

- (a) Developer has contracted with Performance Engineering LLC to design a drainage plan for Windmill Farms Subdivision. When designing and building Windmill Farms Subdivision Lot owners are required to follow the plan and direct all runoff as per the drainage plan and not obstruct drainage areas.
- (b) The Developer agrees to share the geotechnical report at no cost to Lot owners. The Developer accepts no liability for soils or the report.

23. Any building or residence erected on a Lot shall be of new construction; no old or used buildings shall be moved onto any Lot. Neither shall any manufactured or modular home be placed upon any Lot.

24. Log homes, geodesic domes, A-frame buildings, buildings with earth beams to the roof line or higher, or homes having an unusual exterior design are prohibited.

25. All structures are to be constructed of high quality exterior materials, including siding, roofing, windows, doors, and trim. Vinyl siding, unless approved by Developer is prohibited. Roof pitches of less than 6/1, unless approved by Developer, are prohibited.

26. **Setbacks.**

- (a) Front and rear setbacks shall conform to Carbon County zoning requirements for residential properties. Setbacks from any street for a structure situated on a corner Lot shall comply with Carbon County zoning.
- (b) No buildings shall be located less than twenty feet from either side Lot line of the Lot on which the building is located. The twenty feet measurement is taken from the side Lot line to the nearest wall of the building, i.e., the side set back.

27. **Height Restrictions.**

- (a) Residences constructed on any Lot may be one or two story or split-level. In addition to any one of the aforementioned story option, each residence may also have a basement, which may be walkout or daylight.
- (b) All residences must also comply with the height restrictions imposed by the Carbon County zoning ordinances in effect at the time the residence is built.

28. **Size Restrictions**

(a) Residences constructed on a Lot included in this Declaration must be single family home.

(b) Residences built on any of the Lots shall meet or exceed the following minimum area, excluding the area of the garage and basement, if any:

- One story home: 1,500 square feet on the main level;
- Two story home: 1,850 square feet on both the first and second story;
- Split level: 1,650 square feet on all three levels

(c) Variance from these size requirements may be made only by approval of a 75% majority vote by the Home Owners Association members. Each Lot is given a single vote.

29. Fences may be constructed only of vinyl, metal, or masonry, or combinations of these materials, except that dog runs may be fenced with chain link fence. Fences must be maintained by the Lot owner to reflect a high pride of ownership. Variances for fence construction materials may be made only by approval of the Architectural Review Committee, as provided for later herein.

30. All Lots must be fully landscaped within eight months after substantial completion of construction of a residence on that lot. Landscaping Plan shall include boulevard trees spaced at 1 tree per every 40 feet of frontage.

31. Any garage and detached buildings on a Lot, except playhouses, shall have outside walls and a roof of the same materials and color as that used on the residence on that Lot.

32. No excavations, except that which is necessary for the construction of improvements, shall be permitted on any Lot until such time as the actual construction of the residence is to begin. However, the Lot owner may drill and excavate for the purpose of testing the sub-soil conditions.

33. No building material of any manner or character shall be placed or stored on a Lot until the Lot owner is ready to commence construction of improvements, and then such materials shall be placed within the property lines of the Lot on which the residence is to be erected and shall not be placed in the streets, on the sidewalks, or between the curb and property line. Construction of any building must be completed within twelve months after construction is commenced.

## **ARCHITECTURAL REQUIREMENTS**

34. So long as Developer owns any of the lots in Windmill Farms Subdivision, Developer shall have the sole authority to request, review, and approve conceptual architectural plans prior to transfer of deed for the property. Developer's review shall be based upon the following:

- Conformity and harmony of external design with neighboring residences and other improvements
- Architectural style and materials of the proposed building(s)
- Exterior color

35. All garages, sheds, and other outbuildings shall be constructed of similar materials and color to the main residence.

### HOMEOWNERS ASSOCIATION

36. **Membership in Association.** Lot owners shall be members of a Montana non-profit corporation, formed or about to be formed, known as "**WINDMILL FARMS SUBDIVISION HOMEOWNERS ASSOCIATION**", herein called "Association". "Lot owner" shall mean each person, as shown by the records of the Carbon County Clerk and Recorder, owning all of or an undivided interest in a Lot. If such owner has sold to a third person under the terms of an agreement for future delivery of title, and notice of such agreement is recorded with the Carbon County Clerk and Recorder, such third person shall be deemed the Lot owner. Co-owners or joint owners of a Lot or Unit shall be deemed to be one member for the purposes of voting and assessment. The affairs of the Association shall be governed by its Bylaws, attached hereto as Exhibit "A".

37. **Parkland Waiver** Each lot owner, by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to waive any right to protest the relocation of the private parkland as shown on the plat of the Windmill Farms Subdivision, 1<sup>st</sup> Filing, as deemed necessary by the Developer.

38. **Rights of the Association.** The Association shall have the right, but not the obligation, to enforce this Declaration. In the event that any Lot owner shall permit any residence or other improvement, including any landscaping for which it is the responsibility of such Lot owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly, or unattractive condition, the Association may notify the Lot owner to take corrective action. If corrective action is not taken by the Lot owner within a reasonable time, as determined by the Association Board, the Board may cause such corrective action to be taken and shall assess the expense of correction to the Lot owner as a special assessment, payable only by that Lot owner. If a Lot owner fails or refuses to pay such an assessment, the Association may, as provided below, file and foreclose a lien for the amount of the assessment.

39. **Annual assessments.** The Association, through its Board of Directors, shall establish and collect an annual assessment from each association member to pay for all costs of the maintenance described above, for administrative and legal expenses, and for any other expenses authorized or required by the provisions of this Declaration. The Board shall not have the authority to increase the annual assessment more than 10% per year for these expenses without a vote of 51% of the Association members.

40. **Payment of assessments** Each Lot owner shall be responsible for the payment of assessments within 30 days after the Board gives notice of assessment. Assessments paid more than 30 days after the date when due shall bear interest at the rate of 12% per annum from the due date until paid. All payments upon assessments shall be applied first to interest and then to the earliest assessment due. Interest collected shall become part of the Association's account. In no event shall the interest charged be more than permitted by the Montana usury statutes. All assessments collected by the Association may be commingled in a single fund. The Secretary-Treasurer of the Association shall maintain records showing the amounts of all assessments paid and unpaid. Such records shall be available for inspection at all reasonable times by Lot owners or their representatives.

41. **Covenant to pay maintenance assessments.** Each lot owner, by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to pay to the Association all assessments lawfully made by the Association and to waive any right said Lot owner may have, under the laws of the United States or the State of Montana, to claim a homestead exemption for said assessments. Lot owners and their grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of conveyance of any Lot, but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. The Secretary-Treasurer of the Association shall notify third parties, upon their request, of the amount of unpaid assessments on any Lot.

42. **Remedies for non-payment of assessments.** All unpaid sums assessed by the Association to any Lot, together with interest, collection costs, costs of suit, and reasonable attorney fees, shall constitute a lien on such Lot, and if filed of record, may be foreclosed in the same manner as a construction lien. Such lien shall not take priority over any sums unpaid on a first mortgage or trust indenture of record prior to the recording of the lien for assessments. Each assessment, together with interest, collection costs, costs of suit, and reasonable attorney fees shall also be the personal obligation of the Lot owner of the Lot against which the assessment was made at the time the assessment fell due. Furthermore, suit to recover a money judgment for unpaid assessments shall be maintainable by the Association against the Lot owner without foreclosing or waiving the lien securing the same. All costs of collection of delinquent assessments, including but not limited to, court costs, costs of filing liens, and attorney fees, shall be the obligation of the non-paying Lot owner, and may be added to the next regular assessment for that Lot. No sale or transfer of a Lot shall relieve the grantee or transferee from liability for past due assessments or from the lien thereof. All right, remedies and privileges granted to the Association or the Lot owners pursuant to the terms hereof shall be deemed to be cumulative.

## MISCELLANEOUS

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

44. **Alterations to these restrictions.** Unless otherwise provided herein, any alteration or amendment to these restrictions must be in writing and signed by all of the Lot owners, as defined herein, of no less than 75% of the number of Lots. These restrictions may be revoked in whole or in part and additional provisions may be added by written amendment signed by all owners of no less than 90% of the number of Lots. No amendment shall be effective until it is recorded in the office of Carbon County Clerk and Recorder. Unless approved by Developer, no amendment or revocation of any of these restrictions shall take effect prior to sale of all Lots by Developer.

45. **Enforcement.** The Association and each and every one of the Lot owners of Lots in Windmill Farms Subdivision shall have the right to enforce the restrictions and covenants herein,

and any and all amendments thereto, by civil action, including the right to injunctive relief and for damages. It is presumed that some damage would be occasioned by reason of the failure of any Lot owner or owners to comply with these restrictions and the covenants herein contained. If litigation is applicable at law or in equity, a reasonable attorney's fee and expenses.