

**WOODBROOK TOWNHOUSES**  
**AMENDED & RESTATED PROTECTIVE COVENANTS**

**INTRODUCTION**

- I. RIGHTS AND RESPONSIBILITIES
- II. OWNERS' ASSOCIATION
- III. BOARD OF DIRECTORS
- IV. OFFICERS
- V. ARCHITECTURAL COMMITTEE
- VI. MANAGER
- VII. USE AND LEASING
- VIII. EASEMENTS
- IX. MAINTENANCE
- X. COMMERCIAL ACTIVITY
- XI. ENFORCEMENT
- XII. AMENDMENT – TERMINATION
- XIII. SEVERABILITY
- XIV. MISCELLANEOUS

## **INTRODUCTION**

The Woodbrook Townhouses Owners' Association referred to in some parts of these documents as the "WTOA" is an organization made up of all unit owners (or lessors of over a year's tenure) that establish and impose upon the Woodbrook Planned Unit Development, being legally described as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, the following Amended & Restated Protective Covenants (hereinafter "Covenants") which shall be binding and for the purpose of maintaining a uniform and stable value, character, architectural design, use development and maintenance of the premises. These Covenants shall apply to the entire premises and to all improvements placed or erected thereon unless otherwise specifically excepted, and shall be in existence and in full force and effect unless amended as provided in these Covenants, Bylaws, or Rules and Regulations.

At the time of closing, each purchaser of a unit in Woodbrook becomes subject to the Articles of Incorporation, Covenants, Bylaws, and Rules & Regulations of the WTOA.

WHEREAS, WOODBROOK, by and through the Covenants, hereby places certain restrictions, limitations, covenants, and regulations as to the use of said premises.

### **I. RIGHTS AND RESPONSIBILITIES**

It is understood that each Woodbrook townhouse unit owner holds title to all of the structure of the owned unit except for party walls, which are equally owned as tenants in common with the owner(s) of adjoining units. Each unit also includes title to a tract of land including that on which the unit's foundation is located and certain land surface areas extending outside of the boundaries of the structure, as shown in the plat. (Copies of the plat are available at the office of the Gallatin County Clerk and Recorder.) Some of the land area in Woodbrook is common area owned by the WTOA.

Each Woodbrook unit owner grants to WTOA the right and responsibility to maintain all exterior surfaces of the unit and to control the design and appearance of the unit's exterior. WTOA also is granted the right and responsibility to maintain all lawn and landscaping located on common areas and land areas included in the title to each and all units. Individual unit owners can alter the exterior unit surface and garden and patio areas adjacent to their units subject to the review and approval of the Architectural Committee as set forth separately in these Amended Protective Covenants.

This conveyance of rights to the WTOA is in the common interest of all Woodbrook unit owners in order to maintain the property's quality and value.

Each exterior building surface and landscape alteration proposal considered by the Architectural Committee will be evaluated under the assumption that the WTOA will assume maintenance responsibility for the alteration. Even if the unit owner proposing the alteration should commit in writing to the upkeep cost of the structural or landscaping alteration, this does not apply to any subsequent owner of the same unit. Proposals that have the potential of placing an undue future maintenance cost burden on the WTOA will be refused. All exterior building surface and landscape

alterations approved by the Architectural Committee are subject to the terms and conditions of the Grounds Restoration Policy set forth in the WTOA's Rules and Regulations.

## II. OWNERS' ASSOCIATION

1. An Owners' Association to be known as "Woodbrook Townhouses Owners' Association, Inc." shall consist of all members of the corporation as described in the Bylaws and these Covenants. Said Owners' Association shall include the owners of Property in Woodbrook, a planned unit development. All owners of the units on the premises shall be required to be members of such Owners' Association, and shall be bound by the provisions of the Articles of Incorporation and the Bylaws of such Association, copies of which are made a part hereof by reference.

2. The Association shall be governed by a Board of Directors of five (5) persons. The members of the Board of Directors shall be elected by the owner(s) of units situated on the premises – one (1) vote for each unit, regardless of size or value.

3. The Owners' Association shall have the authority and responsibility for the upkeep, maintenance, repair, construction, and reconstruction of the premises which include all common areas. The Association will carry insurance for same, and may hire a manager to carry out the powers and duties of the Association.

4. **ASSESSMENTS.** The Board of Directors of the Owners' Association shall be owners of Property within Woodbrook, and shall have the authority to make such charges and assessments to the members as are reasonably necessary to carry out its functions and duties. Assessments shall be in classes:

**(A) Capital Assessments:** Capital assessments shall be assessed equally to each owner. A reserve account shall be maintained to accumulate funds for capital improvements.

**These capital assessments include but are not necessarily limited to the following items:**

- Reconstruction or replacement of streets, curbs, roofs, fences, skylights
- Construction or improvements on any common areas

**(B) Operating Assessments:** Operating Assessments shall be assessed equally to each owner.

**These operating assessments shall include, but not necessarily limited to the following items:**

- Repair and maintenance of building exteriors
- Snow removal
- Grounds maintenance
- General maintenance and operation of the common areas and streets
- All common area improvements
- Fees for Woodbrook contractors and associated costs incurred during performance of duties
- General operational expenses of Woodbrook as determined by the Board of Directors

**(C) Insurance:** The Association shall purchase building insurance for all building structures in the subdivision and liability insurance for streets and any common areas in the subdivision as set forth hereinbelow. The cost for this insurance shall be assessed against each owner as further set forth hereinbelow:

i. The insurance policy for the Common Elements shall be purchased by the Association. The insurance policy for each Unit's uncovered property (real and personal) shall be purchased by the Owner(s) of each Unit. The Association will assess the Unit Owners who receive the benefit and use of the Common Elements for such insurance coverage. All insurance policies shall be underwritten by an insurance company authorized to do business in Montana.

a) Named Insureds: The named insured for the policy insuring the Common Elements acquired by the Association, shall be the Association as agent for the Unit Owners without naming them. The named insured for the policy insuring each Unit shall be the Unit Owner and lienholders as appropriate. The insurance policy for each Unit, including coverage for liability and the Unit Owner's personal property, will be the sole expense of the Unit Owner.

b) Copies to Mortgagees and Owners: The Association thereon shall furnish one copy of the insurance policy for the Common Elements and of all endorsements to each Unit Owner on request. The Unit Owners shall purchase insurance for those items not covered by the Common Element insurance.

ii. Coverage.

a) Casualty: All Units, Common Elements and Personal Property within the Common Elements upon the Property shall be insured by the Unit Owners and/or the Association respectively in an amount equal to the full insurable replacement value. All such insurance is to be based on current replacement value, as determined annually by the Units' respective insurers, lienholders and Unit Owners for the Units; and by the Board, the insurer and any first lienholder, or their representatives, for the Common Elements. Such insurance policies may be subject to such deductible clauses as are required in order to obtain coverage at reasonable costs. Coverages for the Units and Common Elements shall be increased by the Unit Owners and the Board respectively as may be necessary to provide that the insurance proceeds will be sufficient to cover replacement, repairs or reconstruction. Such coverage shall afford protection against:

i) Loss or damage by fire and other hazards covered by a Special Form – Cause of Loss endorsement; and

ii) Specifically, such other risks including flood and earthquake loss as from time to time shall customarily be covered with respect to buildings similar in construction location and use as the Units on the land,

b) **Public Liability:** In such amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to, hired automobile and non-Owned automobile coverage, if applicable, and with cross-liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

c) Directors and Officers Insurance for the Directors, Officers and Managers, if the Association so desires, in amounts to be determined by the Board.

d) **Insurance:** Such other insurance for the Common Elements as the Board of Directors of the Association shall determine from time to time to be desirable and as may be required by the Federal and State laws.

iii. **Premiums.** Premiums upon insurance policies for the Common Elements purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase in the premium occasioned by use for other than a residence, misuse, occupancy or abandonment of a Unit or its appurtenances or of the Common Elements by a Unit Owner, Owner's Tenant, Occupant or Guest shall be assessed against that Owner. Not less than ten (10) days prior to the date when a premium is due, evidence of such payment shall be furnished by the Association to each lienholder requesting notice.

iv. **Insurance Trustee.** All insurance policies for the Common Elements purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interests may appear. Upon such election being made by the Board of Directors of the Association, the Board shall provide that all proceeds covering property losses shall be paid to such bank or escrow company in Montana as may be designated as Insurance Trustee by the Board of Directors of the Association, which trustee is herein referred to as the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the Unit Owners and their mortgagees in the following shares, but which shares need not be set forth in the records of the insurance Trustee:

a) Unit Owners: A share for each Unit Owner, such share being the same as the percentage interest in the Common Elements.

b) Mortgagees: In the event a mortgagee endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in Trust for the mortgagee and the

Unit Owner as their interests may appear, provided however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to a Unit Owner and mortgagee pursuant to the provisions of this Declaration.

v. **Distribution of Proceeds for Common Elements.** Proceeds of insurance policies for the Common Elements received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

a) Miscellaneous: Expenses of administration, Insurance Trustee and construction or remodeling supervision shall be considered as part of the cost of the construction, replacement or repair of the Common Elements.

b) Reconstruction or Repair: Any balance remaining shall be used for reconstruction and repair of the Common Elements as hereafter provided.

c) If there is no reconstruction or repair of the Common Elements, the first proceeds for distribution after paying the Insurance Trustee shall be made to the first lienholders for such Units before distribution to the Unit Owners. If Common Elements are destroyed and partially rebuilt distribution shall be made to Unit Owners or the Insurance Trustee, as their interests appear based on the reconstruction of the Common Elements.

d) After distribution of the insurance proceeds as set forth in subparagraphs a), b) and c) above, any remaining proceeds shall be held by the Association.

e) Certificate: In making distribution to Unit Owners and their lienholders, the Insurance Trustee may rely upon a certificate of the Association made by its representative or Manager as to the names of the Unit Owners and their respective shares of the distribution.

vi. **Distribution of Proceeds for Units.** Proceeds of insurance policies for each Unit received by the Owner(s) shall be distributed to or for the benefit of the Owner(s) in the following manner:

a) Miscellaneous: All Unit Owners are required to repair, reconstruct or rebuild damaged or destroyed Units. The process of repairing, reconstructing or rebuilding the Unit must be commenced within ninety (90) days after the unit has been damaged or destroyed and must be completed within one (1) year after the date of

damage or destruction of the Unit. Expenses of administration and construction or remodeling supervision shall be considered as part of the cost of the construction, replacement or repair of the Unit.

b) Reconstruction or Repair: Any balance remaining shall be used for reconstruction and repair of the Unit, as hereafter provided.

vii. **Association as Agent.** The Association is irrevocably appointed agent for each Unit Owner and for each holder of a mortgage or other lien upon a Unit and for each Owner of any other interest in the townhome Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

viii. **Benefit to Mortgagees.** Certain provisions in this Article are for the benefit of mortgagees or trust indenture beneficiaries, and all such provisions are covenants for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee or beneficiary.

ix. **Reconstruction of Common Elements:**

a) Repair after Casualty: If any Common Element of the townhome Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired, shall be determined in the following manner:

i) Lesser Damage: If a Common Element is found by the Board of Directors of the Association to be tenantable after the casualty, the damaged property shall be repaired.

ii) Untenantable. If a General Common Element is found by the Board of Directors to be not tenantable after the casualty, the damaged property may be reconstructed or rebuilt as provided in the applicable provisions of the Unit Ownership Act.

iii) Election Not to Rebuild. In the event the Owners Association elects not to rebuild the Common Element as herein provided and set forth in 70-23-802 MCA, the insurance proceeds shall be used to satisfy any outstanding liens or encumbrances on the property, and then disbursed as provided in 70-23-805, MCA.

iv) Certificate: The Insurance Trustee may rely upon a certificate of the Association made by its President or Manager as to the determination whether or not the damaged property is to be reconstructed or rebuilt.

b) Plans and Specifications: Any reconstruction or repair of a General Common Element must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications approved by not less than seventy-five percent (75%) of the Unit Owners. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration.

c) Responsibility: The responsibility for reconstruction or repair after casualty shall be the Owners Association who shall work with the Insurance Trustee to carry out the provisions of this Article.

d) Assessments: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair of the Common Element for which the Association is responsible, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds to cover the payment of such costs. Such assessments shall be in proportion to the Owner's percentage of interest in the General Common Elements.

e) Construction Funds: The funds for payment of costs of reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in the sound discretion of the trustee and according to the contract of reconstruction or repair, which contract must have the approval of the Board of the Association involved.

f) Surplus: It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Association for the use and benefit of the Unit Owners.

x. **Reconstruction of Units:**

a) Repair after Casualty: If any part or all of a unit shall be damaged by casualty, it shall be reconstructed or repaired.

b) Plans and Specifications: Any reconstruction, repair or rebuilding of a Unit must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications approved by the Board of the Association. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration.



c) Responsibility: The responsibility for reconstruction or repair of a Unit after casualty shall rest solely with the Owner(s), who shall carry out the provisions of this Article. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair of the Unit for which the Owner(s) is responsible, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, the Owner(s) agrees to promptly provide the balance of the funds necessary to complete the reconstruction or repair.

**5. PAYMENT OF ASSESSMENTS:**

All Operating Assessments levied by the Board of Directors of the Association shall be paid monthly or annually. If paid monthly, assessments shall be due on or before the tenth day of each month. If paid annually, they will be due by December 1<sup>st</sup> of each year. Operating assessments must be based upon an annual budget approved by the membership at its Annual Meeting. The Association has the authority to impose reasonable charges for interest and penalties for overdue payments including attorney fees and other costs of collection.

All Capital assessments levied by the Board of Directors of the Association will be due and payable upon a time (and in a manner) specified by the Board. Consideration will be given to the time frame and requirements of the project at hand.

Upon notice, unpaid assessments shall become a lien against the unit, and shall be a personal debt of the owner for the period of time when the unit was owned, either during or after the period of ownership by such person. Such lien may be foreclosed upon in a like manner as a mortgage debt on real property. Foreclosure proceedings may include the addition of court costs, expenses, and attorney fees.

**6. LIMITS ON ASSESSMENTS:**

Operating assessments for any non-budgeted item which costs more than one thousand dollars (\$1,000) must have the approval of at least four (4) of the members of the Board of Directors. Capital assessments must have the approval of at least fifty-one percent (51%) of the members of the Association.

**III. BOARD OF DIRECTORS**

The Association shall be governed by a Board of Directors (the BOD) of five persons. The members of the Board shall be elected by the owner(s) of units situated on Woodbrook premises. Regardless of unit size, the owner of each unit is entitled to one vote. The Directors of the WTOA must be owners of property within Woodbrook, or long-term resident relatives of owners.

The Board of Directors has all the powers and authority of directors as defined under the Montana Non-Profit Act, including but not limited to the following:

- Enforcing Covenants, Bylaws, and Rules & Regulations;
- Making such charges and assessments of the membership as are reasonably necessary to carry out WTOA functions and duties;
- Developing yearly budgets for submission to the WTOA membership for approval;
- Monitoring and approving expenses throughout the year to assure compliance with the approved budget;
- Hiring a Manager and/or contractors (within the limits of approved budgets) to accomplish all or part of the functions of the preceding paragraph;
- Selecting insurance coverage and brokers;
- Entering into contracts for lawn care, building painting, street maintenance, snow removal, and other necessary functions;
- Directing the activities and functions of the Architectural Committee;
- Assuring the year-round maintenance of common grounds, roads, building exteriors and landscaping.
- Representing the WTOA in appropriate community affairs;
- Calling annual meetings and conducting elections; and,
- Other activities deemed by the Board to be advantageous for the WTOA.

#### **IV. OFFICERS**

Officers of the WTOA include a President, one or more Vice Presidents, a Secretary, a Treasurer and, at the option of the BOD, a Manager. Duties of the directors and officers are described in the Bylaws.

A Manager may be hired by the BOD to accomplish routine administration of the WTOA, including but not limited to:

- Solicitation of bids from service providers;
- Supervision of maintenance contractors;
- Response to owners' requests, questions, and suggestions; and
- Conducting day-to-day business of the Association.

## **V. ARCHITECTURAL COMMITTEE**

1. There is hereby created an Architectural Committee which is herein referred to as "The Committee". The Committee shall consist of three (3) members at least one of whom shall also be a member of the Board of Directors of the Association. Committee members shall be elected each year at the annual meeting by the members of the Association. They shall serve for two (2) years. Any mid-term committee vacancies shall be temporarily filled by a member of the Board of Directors. This director shall serve until the next annual meeting at which time the Association will elect a member to fill any remaining term of the vacant position. The chairman of the Committee shall be designated by the Board of Directors.
2. The Committee may make such reasonable rules and adopt such procedures as it deems necessary to carry out its functions. The Rules and Regulations must be consistent with the provisions of these covenants.
3. No construction, landscaping, parking areas, fences, walls or other improvements shall be placed, constructed, erected, repaired, reconstructed, restored, altered, remodeled, added to or maintained on the premises until building and site plans and specifications and such other information as the Committee may reasonably require including, but not limited to color, building materials, and models have been submitted to and approved by a majority of the Committee. A written record of Committee decisions shall be maintained by the Committee.
4. The Committee shall require that all construction complies with the provisions of the standard codes or their amendments which are recognized, adopted, and enforced by the City of Bozeman.
5. All improvements, construction, reconstruction, alterations, remodeling or any activity requiring the approval of the Committee must be completed in substantial compliance with the plans and specifications approved by the Committee.
6. Each owner may select areas for planting flowers or bushes or for other purposes desired for individual care, provided the Architectural Committee approves. It is further provided that such plantings, flowers, or other purposes remain consistent with the aesthetics of this community, are placed within the fenced areas or contiguous with the foundation of their unit, and are regularly maintained by the unit owner in order to preserve Woodbrook's high standard of appearance. Should an area become neglected or abandoned by the unit owner, it will become subject to restoration under the provisions of the Grounds Restoration Policy (Rules & Regulations).
7. The Committee shall be governed by the following guidelines in its consideration of plans and specifications submitted for its approval:
  - (A) It must recognize that all improvements within the premises must be harmonious and consistent with the entire premises to maintain a uniformity of value and quality.

(B) In considering any plans or specifications the Committee shall examine the suitability of the same to the site, including construction materials, as well as the relationship of the same to the adjacent properties and the entire area.

(C) No plans or specifications shall be approved which will be so similar or dissimilar to other improvements or structures that monetary or aesthetic value will be impaired.

(D) Planting of trees, bushes and hedges on property boundary lines or where they might encroach on a neighbor's property, must have the acquiescence of the neighbor sharing the boundary.

(E) All plans and specifications shall be in full compliance with all of the terms and provisions of these covenants unless a waiver has been granted by the Committee and the Board of Directors for such plans and specifications.

(F) Construction of all improvements, e.g. fences, patios, etc., shall conform to the setting and blend with the surrounding area.

(G) In the event of reconstruction of a casualty loss, such reconstruction shall be substantially similar to the structure that existed prior to said loss.

(H) The Committee shall determine if neighbors of the unit requesting an improvement should be informed or consulted about the impact on their property.

8. A member of the committee requesting a committee decision on his/her own behalf or having a biased view of a request because of friendship or antipathy toward a participating individual, should disqualify him/herself from participating in the decision.

9. The Committee or individual members thereof may not be held liable by a person for any damages which may result from Committee action taken pursuant to these covenants including, but not by way of limitation, damages which may result from correction, amendment, change or rejection of plans, issuance of building permits or delays associated with such action on the part of the Committee.

## **VI. MANAGER**

1. A manager or managers may be hired by the BOD. The specific duties of the manager are set forth in the WTOA Rules and Regulations.

2. The intent and purpose of this provision is to arrange for a manager to provide services to ensure that a uniform level and standard of care is maintained within the subdivision for the benefit of all property owners, and to maintain the value of all properties on the premises.

3. The members of the Association grant to the Board of Directors, the Architectural Committee, and the Association Manager an easement for ingress and egress to their units for the purpose of providing care, upkeep, maintenance, and repair.

## **VII. USE AND LEASING**

The leasing of Woodbrook Townhouse units is subject to the Montana Human Rights Act and all the provisions of the applicable Bozeman City Code(s). Complete units may be leased according to the conditions set forth in this Article.

1. Leasing is defined as allowing a person(s) to occupy all or any part of a Unit for a monetary consideration or its equivalent. Nothing herein shall preclude a Unit Owner from retaining a live-in health care provider.

2. No owner shall lease a Unit for hotel or transient purposes.

3. Leases of less than six months are not permitted without Board of Directors approval.

4. Pets are NOT allowed in any leased unit. Tenants shall not bring, keep or maintain any pet of any kind in any leased unit. A pet in leased units at the effective date of this policy will be grandfathered in until such time the lessee moves out, the pet passes away or the lease is terminated.

5. No more than eighteen (25%) of the seventy-one Units at Woodbrook shall be leased at one time. The eighteen leased Units shall be determined on a first come, first served basis. In order to lease a Unit, the Owner must request in writing to the Woodbrook Board of Directors that the Unit become a leased Unit. If there are less than eighteen Units leased at the time of the request, the Board shall grant the request. The Owner will have 90 days from the time of the approval to secure a valid, signed lease. The Board will keep a list of which Units are leased. Should an Owner lease a Unit without obtaining permission of the Board, the Board shall have the power to enforce this provision with an action for possession of the Unit (i.e. eviction) should the Board deem such an action necessary.

6. The Board of Directors may consider requests from owners to exceed the eighteen Unit limit for special circumstances the Board of Directors deems reasonable. If such request is granted, it shall be for a period not to exceed one year, provided, however, the Board of Directors may consider requests to extend beyond the one-year period and shall either grant or deny such request within 45 days of receiving a written request for extension.

7. When eighteen units are leased (25%), Owners of Units desiring to offer other Units for lease may make a request to the Board of Directors to be placed on the waiting list. A waiting list of Unit Owner(s) wanting to lease their Unit shall be established and Units shall be placed on the waiting list on a first-come, first-serve basis. The Owner of the first Unit on the top of the waiting list shall be notified in writing when the number leased Units is less than 25%. The Owner will have 90 days from the date of notice to secure a valid, signed lease. If at the expiration of this 90-day period and a lease has not been provided to the Board of Directors, the next Unit in line on the waiting list shall be granted pending permission by the Board of Directors to lease their Unit. Unit Owners are to be given the same procedures established until the current policy for leased Units has been reached.

8. Units leased at the time of the effective date of this policy will be allowed to remain in leased status until the property is sold, otherwise changes ownership, or is re-occupied by the Owner. At that time, the unit may be leased only in accordance with this leasing policy. New Owner(s) of formerly leased Units and/or Owners who re-occupy a formerly leased Unit will not receive priority over other Owners on the waiting list.
9. Leases shall be permitted only for single household, as defined by Bozeman City Code, for residential purposes.
10. Lessor must, at lessor's expense, provide lessees with copies of the Covenants, Bylaws, and Rules and Regulations. Leases must specify that lessees/occupants must comply with all provisions of these three documents and require a signed statement from each occupant certifying that they have read and agree to abide by such rules, policies, regulations, covenants and declarations. Unit Owners are responsible for violations by their tenants.
11. Within five days of securing a lease agreement for the Unit Lessors must deliver to the Association a signed "Woodbrook Unit Rental Agreement". This Agreement is available by contacting the Secretary of the Association.
12. Occupancy shall be limited to those individuals named on the lease and the Woodbrook Unit Rental Agreement, except for bona fide short-term (less than two weeks) guests.
13. Subleasing is not permitted.
14. The Woodbrook Townhouse Owner's Association is not responsible for leases negotiated by any of its members, nor is it responsible for its members' advertisements seeking lessees. It is the responsibility of individual owner/lessors to comply with local, state and federal laws relative to the leasing process.
14. Unit Owners may retain a house sitter or caretaker during periods of Owner(s) absences. A house sitter and/or caretaker are defined as person or single families temporarily residing in and responsible for complete Units during temporary absences of the owners or lessees. They are subject to the provisions of the Bylaws and Covenants, including the Rules and Regulations of the Association.
15. In the event a lessee, house sitter, and/or caretaker fails to comply with the Bylaws, Covenants, Rules and Regulations, or becomes a public nuisance, the Association, after notification to the Owner, **may** initiate action against the Owner requiring the Owner to evict the offending Lessee. Such proceedings shall be taken in accordance with the Woodbrook Townhouse Owner's Association rules, policies, regulations, covenants and declarations. The prevailing party in such proceedings shall be entitled to an award of reasonable attorney's fee, cost of collection of the judgment and related costs.

**Note:**

***If this covenant is less restrictive than the zoning laws enforced in the City of Bozeman, the more restrictive shall apply.***

## **VIII. EASEMENTS**

1. Easements for roads, drainage, electricity, gas, telephone, lighting, water, sewer, cable television and all other utilities, paths, pedestrian traffic or any other service or utility are reserved.
2. All roads and streets include an easement for drainage, gas, electricity, telephone, lighting, water, sewer, cable television, and other utilities.
3. Easements areas other than for roads and streets may be used and landscaped by property owners so as to enhance their appearance, so long as such use and landscaping has been approved by the Architectural Committee and does not interfere with the use of the property as an easement.
4. Utilities doing work in easement areas must, at the expense of the utility, restore and maintain those areas to the condition that existed previous to the work.

## **IX. MAINTENANCE**

The WTOA is responsible for:

- Staining/painting of building exteriors.
- Street re-sealing & routine maintenance.
- Snow removal
- Grounds maintenance (includes mowing, trimming, fertilizing, herbicide applications, watering, etc. of common areas, trees, and shrubs)
- Building repairs and routine maintenance.
- Major repairs and/or replacement of siding and roofs, including skylights.
- Sprinkler repairs and/or modifications, as well as start-up and shut-down of the system.

All owners grant an easement for ingress and egress to their lots for the purpose of providing the care, upkeep, maintenance, and repair as noted above.

Common areas in the premises are watered by the WTOA from connections to 16 individual units. The owners of these units shall be responsible for these costs at the time they are billed by the in accordance with a formula for water use approved by the Board of Directors. Requests for reimbursement must be made on or before October 15 of each year.

## **X. COMMERCIAL ACTIVITY**

Woodbrook is a residential community. Commercial activity is prohibited with the exception of home offices with no outside employees which do not create Woodbrook parking or traffic problems.

## **XI. ENFORCEMENT**

**The Declarants and every person hereafter receiving any right, title or interest in any tract in said property shall have the right to prevent or stop violation of any of the said restrictions by injunction or other lawful procedure, in law or in equity, against the person or persons violating or threatening to violate these restrictive covenants to either restrain the violation of the covenants or**

**to recover damages, or both. In the event of any action to enforce these covenants, the prevailing party shall be entitled to costs and reasonable attorneys' fees to be assessed by the court. The failure of the Declarants or any subsequent owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver or in any way prejudice the right to enforce the covenant or any covenant thereafter, or to collect damages for any subsequent breach of covenants. The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other covenants or provisions, all of which shall remain in full force and effect.**

It is anticipated that enforcement of these Covenants and of the Rules and Regulations of the WTOA will require no more than a friendly verbal or written reminder by an Officer or Director. If the reminder fails to correct a violation of the Covenants, Rules or Regulations, the BOD will meet with the violator to resolve the disputed (or ignored) violation. Should the meeting fail to resolve or correct the violation, or should the violator refuse to meet with the BOD, further action as noted in the following paragraphs will be taken:

1. In the event of any violation, threatened (or planned) violation of these Covenants, Rules and Regulations, including failure to pay any assessments, the WTOA, through its Board of Directors, may enforce these Covenants. The violator will be given proper notice and a reasonable time period in which to comply with these covenants before the WTOA embarks upon legal proceedings as a remedy. Such proceedings shall be as set forth in Paragraphs 2, 3, 4 and 5, below.
2. Notice 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, Rules & Regulations, and shall state the action which will be taken if the violation or threatened violation is not abated, remedied or satisfied. Notice shall set a date, time and place for a hearing at which time the owner(s) may appear and answer the charges set forth in the notice. If notice cannot be personally served after a reasonable effort to locate the person or entity to be served, service may be accomplished by posting a copy of the notice at a conspicuous place on the property which is the subject of such violation. In addition, a copy of the notice shall be sent by certified mail, return receipt requested, to the last known address of the violator. Notice must provide for a period of fifteen (15) days from the date of personal service or thirty (30) days from the date of posting and mailing, within which a hearing can be held before any self-help, abatement, entry or commencement of litigation can begin.
3. The hearing shall provide an opportunity for all parties to be heard. The hearing shall be presided over by a hearing examiner, an attorney licensed in Montana and mutually agreeable to the accused owner and the Board of Directors, or if they cannot agree, the attorney for the Association shall select the hearing examiner. At the hearing, each party shall have the right to present witnesses and the right to cross-examine witnesses. At the conclusion of the hearing, the examiner shall immediately make a finding and if the violation is found, the owner (against whom charges have been brought) shall have a specified period, not to exceed fifteen days, as determined by the examiner, to remedy or abate the violation. If not so remedied or abated, the WTOA may take whatever steps available by law



(including the filing of a lien for unpaid assessments) necessary to correct the violation. In the event of the failure to respond or appear by the owner of the property subject to violation, the hearing must nevertheless be held and the hearing examiner must present written finding of a violation before any further action can be taken or lien filed.

4. No WTOA owner, officer, director, representative, employee or manager shall be liable to any person or entity for any entry or abatement of a violation or threatened violation of these Covenants and/or Rules and Regulations in accordance with this Enforcement covenant.

5. Actual costs, expenses, and attorney's fees connected with this Enforcement covenant, incurred through litigation, holding a hearing, and unpaid assessments shall constitute a claim by the WTOA against the owner of the property which is the subject of such violation or threatened violation. Such claim shall be enforceable through appropriate court action. Following a hearing or upon court order, the WTOA may file a lien against the subject property in the amount of and for the collection of the claim by filing a verified statement of the lien with the Office of the County Clerk and Recorder of Gallatin County, Montana. The lien statement must set forth the names of the claimant(s) and the owner of record of the property against which the lien is claimed, a description of the property, the amount of the claim, the date of the claim and a brief statement of the manner in which the amounts constituting the claim were incurred. Once filed, the lien shall remain on record as a claim against the property until paid in full or foreclosed upon in the manner otherwise provided by law, subject to rights of redemption.

## **XII. AMENDMENT – TERMINATION**

These Covenants, or any portion thereof, may be amended, abandoned, terminated, modified or supplemented at any time by the written consent, duly recorded with the Office of the Clerk and Recorder in and for Gallatin County, Montana, of the owner of two-thirds of the Woodbrook units.

## **XIII. SEVERABILITY**

A determination of invalidity in one of these covenants or conditions by judgment, order or decree of a Montana Court, shall not affect (in any manner) the other covenants or provisions which shall remain in force.

## **XIV. MISCELLANEOUS**

1. The Board of Directors of the Association shall have the authority to promulgate and adopt reasonable rules, regulations, and policies for the upkeep, maintenance, repair, and use of the residential units, streets and any common areas of Woodbrook. Such rules or any portion may be amended, altered, supplemented or terminated at any time by a two-thirds vote of those voting at a regular or special meeting of the Association.

2. The Board of Directors has the power to set rules and regulations concerning vehicle parking within the Woodbrook streets. Such rules and regulations shall not conflict with the Covenants or Bylaws.

The Members of the Association voted to amend the Protective Covenants of Woodbrook Townhouses, Phase III-B, Doc. No. 95251, Dated June 29, 1981, Gallatin County, and as amended, by mail in ballot. Sixty-Three Units voted in favor of the amendment and Eight Units did not vote at all. According to the current declaration language, an amendment must pass with at least 75% of the vote. Therefore, this document supersedes all previous documents.

This document is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

WOODBROOK TOWNHOUSES OWNERS'  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Donna J. Minton, President

State of Montana       )  
                                  :SS  
County of Gallatin    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2018, by Donna J. Minton, as President of Woodbrook Townhouses Owners' Association, Inc.

(Seal)

\_\_\_\_\_  
\_\_\_\_\_  
NOTARY PUBLIC for the State of Montana  
Residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_

## **EXHIBIT A**

The premises comprise all of Block 4 of Thompson's Addition No. 4 to the City of Bozeman, Montana, situated in the Southwest Quarter (SW1/4), Section 18, Township 2 South, Range 6 East, M.P.M., Gallatin County, Montana, excepting a parcel of land on Hoffman Drive described as follows:

A tract of land being a portion of Block 4 of Thompson's Addition No. 4 to the City of Bozeman and located in the SW1/4, Section 18, Township 2 South, Range 6 East, M.P.M., Gallatin County Montana, being further described as follows: Commencing at the intersection of Black Avenue and Hoffman Drive, thence along the centerline of Hoffman Drive through the following courses: South 71°59'00" West, a distance of 55.00 feet; thence along a 96.71 foot radius curve to the right through a central angle of 42°14'00", a distance of 71.29 feet; thence North 65°47'00" West, a distance of 74.84 feet; thence along a 776.18 foot radius curve to the left through a central angle of 03°33'13", a distance of 48.14 feet; thence leaving said centerline North 20°39'43" East, a distance of 30.00 feet to the Northerly right-of-way of Hoffman Drive and the true point of beginning. Thence following said right-of-way along a 806.18 foot radius curve to the left, the tangent of which bears North 69°20'13" West through a central angle of 06°57'54" for a distance of 98.00 feet. Thence leaving said right-of-way North 13°41'53" East, a distance of 87.00 feet. Thence South 72°48'57" East, a distance of 108.51 feet. Thence South 20°39'47" West, a distance of 87.00 feet to the point of beginning, according to Certificate of Survey No. 346-B.