

SUBDIVISION IMPROVEMENTS AGREEMENT

Amended Tract 5 Middle Valley Subdivision

This agreement is made and entered into this 11th day of June, 2007, by and between **Wayne Hertzler**, whose address for the purpose of this agreement is 110 Schreiner Road, Park City, MT 59063, hereinafter referred to as "Subdivider," and Stillwater County, Montana, hereinafter referred to as "County".

WITNESETH:

WHEREAS, the plat of **Amended Tract 5 Middle Valley Subdivision**, located in Stillwater county, Montana, was submitted to the Stillwater County Planning Board; and

WHEREAS, at a regular meeting conducted on 9th day of April 25, 2005, the Stillwater County Board of County Commissioners conditionally approved a preliminary plat of **Amended Tract 5 Middle Valley Subdivision**; and

WHEREAS, a Subdivision Improvements Agreement is required by the County prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to **Amended Tract 5 Middle Valley Subdivision** upon the filing of the final plat thereof in the office of the Clerk and Recorder of Stillwater County, Montana. The Subdivision shall comply with all requirements of the Stillwater county and Town of Columbus Subdivisions Regulations, the rules, regulations, policies, and resolutions of Stillwater County, and the laws and administrative rules of the State of Montana as of date of submittal.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

- A. Subdivider has requested, and the County hereby grants, the following variances by the Board of County commissioners from the strict interpretation of the County's Subdivision Regulations (**None**):

II. CONDITIONS THAT RUN WITH THE LAND

- A. All lots created by this subdivision will be covered by requirements of covenants and restrictions filed with the Final Plat.
- B. Lot owners should be aware that this subdivision is being built in close

proximity to prime deer habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety. Additionally, there are likely to be impacts on wildlife from domestic pets.

- C. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the Stillwater County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction. The limitations as listed by the "Soil Survey of Stillwater County" are: 1) Frost Action; 2) Wetness; 3) Low Strength.
- D. There are no surface water rights associated with the property and no water rights have been transferred to the lot owners.

III. TRANSPORTATION

Access to **Amended Tract 5 Middle Valley Subdivision** is provided by the county road, **Schreiner Road**, which has a gravel surface. The lot owner is responsible for installing an approach to the property. Lots 1 and 2 will require new approach permits from Stillwater County. Lot 3 will use an existing access and Lots 4, 5, and 6 will use Sunbird Drive which is currently permitted by Stillwater County, Montana. Any new approach must be permitted by the Montana Highway Dept.

The lot owners of Amended Tract 5 Middle Valley Subdivision will be responsible for maintenance of Sunbird Lane and stormwater appurtenances.

IV. EMERGENCY SERVICE

Fire protection, ambulance or law enforcement service shall have access by **Schreiner Road**. The rural nature of the subdivision location will result in longer response time for emergency services including: law enforcement, ambulance, and fire protection..

Fire protection facilities shall include the use of the 30,000 gallon water storage tank located adjacent to **Schreiner Road immediately to the north** as approved by the Park City Volunteer Fire Department.

The Sunbird Homeowners Association is responsible for participating in the maintenance of the mutual benefit 30,000 gallon fire fill facility jointly used and maintained by:

Meadows Homeowners Association

MV2 Homeowners Association
Sunbird Homeowners Association
Other Subdivision Property Owners Association as decided by Diamond Ranch

LC.

A yearly fee will be identified based on a maintenance budget. Each participating homeowners association will be responsible for payment of a percentage of the fee based on the number of lots utilizing the protection of the fire fill facility.

All homeowners associations who have permission to utilize the facility must participate in the pro rata share of maintenance and repair of the facility to include any taxes and insurance required.

V. STORM DRAINAGE

All drainage improvements shall comply with the stormwater management plan submitted to and approved by the County Sanitarian/DEQ. No other drainage improvements are proposed.

VI. UTILITIES

A. Water

Potable water shall be provided by individual on-site wells. The lot owner is responsible for having the well drilled and for paying all costs. A representative conductivity is 785 umhos/cm, which represents the amount of dissolved solids in ionic form present in the water. This value could be related to a range of 500-1000 mg/l of total dissolved solids. A representative nitrate value is 0.74 mg/l. Nitrate enters water through geologic, agricultural and human waste sources. The EPA standard for drinking water is 10.0 mg/l. The expected well depth is 25 -35 feet and water is 4-8 feet below the surface. Supply is plentiful.

B. Septic System

Sewage collection and disposal is accomplished by individual septic systems. Each lot owner must install a septic tank and dose tank/pump system on his lot as per approved DEQ plans. A supply pipe must be installed from each lot to the common drainfield area located on Lot 5 as per the Final Plat. Appropriate gravelless chamber drainfields must be installed by the owner for a specific lot. Each lot owner is responsible for operating, maintaining and repair of the septic system serving that lot. All work in the area of the common supply piping and common drainfield area must be cleared with the Board of Directors of the Sunbird Homeowners Association prior to beginning work. All disturbed ground must be reclaimed to the satisfaction of the Board of Directors of the Sunbird Homeowners Association.

C. Power and Telephone

Electric power is provided by Yellowstone Valley Electric Coop. and telephone is provided by QUEST.. Both utilities are available adjacent to Schreiner Road or within the subdivision. YVEC has been consulted and they have approved a plan for extension of power to each lot. Each lot owner is responsible for the cost to extend to his specific lot at the time of construction of the home. It is the responsibility of each lot owner to arrange for power and telephone to the specific desired location on a tract.

VII. PARKS/OPEN SPACE

Due to the small amount of required parkland, Cash-In-Lieu of parkland dedication has been agreed to by the developer and Stillwater County.

VIII. IRRIGATION

There are no Irrigation District ditches within the subdivision. There is a wastewater and drainage ditch located on the north boundary. There are no water rights transferred with the sale of the lots.

IX WEED MANAGEMENT PLAN

All noxious weeds on the latest Stillwater County Noxious Weed List shall be controlled on all properties in the subdivision by the lot owners. The following Weed Management Plan addresses this responsibility. This Plan also addresses the revegetation of all areas disturbed by construction activities.

1. Each year, for all land within the Amended Tract 5 Middle Valley Subdivision owned by the developer, an annual weed inspection will be performed. Any noxious weeds found will be sprayed by the developer with appropriate herbicides. If classes of herbicides are required which the developer does not have license to apply, a commercial applicator will be retained to supply and apply such herbicides.
2. Upon the sale of any lot or tract within the subdivision the responsibility for weed control shall transfer to the buyer.
3. Each owner of a lot in the proposed subdivision shall be responsible for an annual weed inspection performed in the spring or early summer and shall arrange for followup weed control measures performed by a commercial applicator immediately thereafter. Since the yards will be landscaped the occurrence of weeds is expected to be extremely limited.
4. If the lot owner does not discharge his duties to control noxious weeds on his

property to the satisfaction of the Stillwater County Weed Control Board, he will be subject to the existing penalties as are provided for in the law. These may include but not be limited to the cost of having the Weed Control Board perform the control measures.

5. Requirements of the initial weed report must be met to the satisfaction of the Stillwater County Weed Board in compliance with the Montana Weed Law.
6. All disturbed areas are to be seeded with Western Wheatgrass or other appropriate variety, as soon as possible to prevent the invasion of noxious or common weeds.. The seeding will be performed by either; hand spreading and raking; or with a seed drill and drag. The application rate will be 12 pounds per acres.
7. Lots must be in a physical condition that new owners can maintain a vegetation and weed management program in the future. This will be site specific considering individual conditions.
8. Stillwater Weed Control District and MSU Extension Service will be available for recommendations and advice.

X. SOILS/GEOTECHNICAL STUDY

No geotechnical studies were done in conjunction with this subdivision. The developer does not warrant the suitability for below grade living space.

XI. IMPROVEMENTS

All improvements will be installed prior to subdivision platting. Improvements which have been installed are:

30,000 gallon mutual benefit fire fill facility
600 feet of private, public access road w/cul-de-sac
12"x40' Culvert
Stop/street name sign

XII. FINANCIAL GUARANTEES

None required.

XIII. MAIL SERVICE

Mail deliver shall be by post office box or home delivery on Schreiner Road, at the specific request of each lot owner.

XIV. LEGAL PROVISIONS

- A. The owners of the properties involved in this proposed subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.
- B. The covenants, agreements, and all statements in this Agreement apply to and shall be binding on the heirs, personal representatives, successors, and assigns of the respective parties.
- C. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.
- D. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.
- E. Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

IN WITNESS WHEREOF, the parties hereto have set their hand and official seals on the date first written.

"SUBDIVIDER"

By: Wayne Hertzler

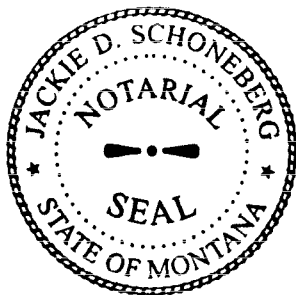
Wayne Hertzler

STATE OF MONTANA)

:ss

County of Stillwater)

On this 11th day of June, 2007, before me, a Notary Public in and for the State of Montana, personally appeared Wayne Hertzler, known to me to be the person who executed the foregoing instrument and acknowledged to me that she executed the same.



Jackie D. Schoneberg
Notary in and for the State of Montana

Printed Name: Jackie D. Schoneberg

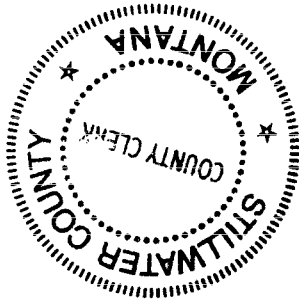
Residing At: Billings

My Commission Expires 10-24-2010

My commission expires: 10-24-2010

This agreement is hereby approved and accepted by Stillwater County, this 2ND day of July, 2007.

"COUNTY"
COUNTY OF STILLWATER
MONTANA



STILLWATER COUNTY
BOARD OF COUNTY COMMISSIONERS

By: Dennis R. Hoyer

Chair

Jerry L. Turner
Commissioner

Maureen Davey
Commissioner

Attest: Pauline M. Miskle
County Clerk and Recorder

332080

8/8

Middle Valley Sub
Amended T.R.S.

Subdivision Improvements
Agreement

332080 SURVEY Pages: 0
STATE OF MONTANA STILLWATER COUNTY
RECORDED: 07/02/2007 11:41 KOI: SURVEY
Pauline Mishler CLERK AND RECORDER
FEE: \$8.00 BY: *Pauline Mishler*
TO: FILED

332080

Form 1284
CLTA Guarantee Form No. 2
Date-Down Indorsement (5-10-67)

INDORSEMENT

Attached to Guarantee No. H 946251
Issued by SC-5428 FA

First American Title Insurance Company
a corporation, herein called the Company,

The Company hereby assures the Assured that, subsequent to March 29, 2007, the date of the Guarantee issued under the above number, no matters are shown by the public records which would affect the assurances in said Guarantee other than the following:

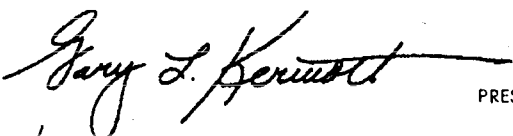
See attached page.

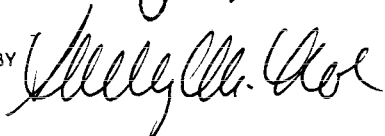
The total liability of the Company under said Guarantee and under this Indorsement thereto shall not exceed, in the aggregate, the amount stated in said Guarantee.

This Indorsement is made a part of said Guarantee and is subject to the exclusions from coverage, the limits of liability and the other provisions of the Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated: June 1, 2007 at 5:00 PM

First American Title Insurance Company

BY  PRESIDENT

BY  ASSISTANT SECRETARY



Indorsement

Attached to Guarantee No. H946251

Issued by SC-5428FA

Section 2, Paragraph B has been released and will be replaced with:

A Deed of Trust dated April 20, 2007, to secure an indebtedness in the principal sum of \$101,096.00, and any other amounts and/or obligations secured thereby.

Recorded: April 25, 2007 under Document No. 331198

Trustor: Wayne Hertzler and Janna Hertzler

Trustee: Richard W. Heard, Attorney at Law

Beneficiary: Yellowstone Bank

Section 4, Taxes is amended to read:

General and special taxes and assessments for the year 2006 are **PAID** in the amount of \$1,734.45. Tax Receipt No. 1010199

General and special taxes and assessments for the year 2007 are an accruing Lien not yet due or payable.

GUARANTEE



***First American
Title Insurance Company***

SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1/9

1. *Except to the extent* that specific assurances are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
 - (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the public records.
 - (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. *Notwithstanding* any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description (set forth in Schedule (A), (C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
 - (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
 - (c) The identity of any party shown or referred to in Schedule A.
 - (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

GUARANTEE CONDITIONS AND STIPULATIONS**1. Definition of Terms.**

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
- (b) "land": the land described or referred to in Schedule (A)(C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A) (C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "date": the effective date.

2. Notice of Claim to be Given by Assured Claimant.

An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

(a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.

(c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company

may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. Proof of Loss or Damage.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required

GUARANTEE

SUBDIVISION OR
PROPOSED SUBDIVISION

FEE: \$150.00
POLICY NO: H 946251
SC-5428 FA

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY, AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE, FIRST AMERICAN TITLE INSURANCE COMPANY, A CORPORATION HEREIN CALLED THE COMPANY, GUARANTEES:

Keith Brown

FOR THE PURPOSES OF AIDING ITS COMPLIANCE WITH STILLWATER COUNTY
SUBDIVISION REGULATIONS,

in a sum not exceeding \$5,000.00.

THAT according to those public records which, under the recording laws of the State of Montana, impart constructive notice of matters affecting the title to the lands described on the attached legal description;

Stillwater County, Montana

Middle Valley Subdivision

Lot 5 as shown on Plat No. 300203

- (1) Parties having record title interest in said lands whose signatures are necessary under the requirements of Stillwater County Subdivision Regulations on the certificates consenting to the recordation of Plats and offering for dedication of streets, roads, avenue, and other easements offered for dedication by said Plat are:

Wayne A. Hertzler and Janna J. Hertzler, husband & wife as Joint Tenants

- (2) Parties holding liens or encumbrances on the title to said lands are:

- a. A Deed of Trust dated August 26, 2005, to secure an indebtedness in the principal sum of \$202,588.26, and any other amounts and/or obligations secured thereby.
Recorded: September 12, 2005 under Document No. 323733
Trustor: Wayne Hertzler and Janna Hertzler
Trustee: William L. Davies, Attorney
Beneficiary: Centex Home Equity Company, LLC

- b. Federal Tax Lien for any amounts due thereunder.
Taxpayer: Wayne A. & Janna J. Hertzler
Amount: \$12,008.96
Recorded: November 17, 2006 under Document No. 329017

(3) Easements, claims of easements and restriction agreements of record are:

- a. Contract dated October 27, 1949 granted to School District No. 5 recorded March 26, 1950 in Misc. Book 33, Page 354.
- b. Reservation(s) contained in Warranty Deed granted to Stillwater County, recorded February 13, 1968 in Deed Book 71, Page 450.
- c. Terms and conditions and easements contained in Warranty Deed granted to Keith Brown and Willow Brown, husband and wife as Joint Tenants and Wayne Hertzler, all as T Tenants in Common, recorded March 31, 1995 in Deed Book 113, Page 685.
- d. Buried Cable Easement filed September 23, 1977 under Document No. 219741.
- e. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, filed October 16, 2000 under Plat No. 300203, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

Provisions contained in that Certificate, executed by the State of Montana, Department of Health and Environmental Services.
- f. Transcribed road records from Yellowstone County filed February 8, 2001 under Document No. 301735.
- g. Restrictions and Covenants as shown on Document No. 302133, filed March 16, 2001, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
- h. County road rights-of-way not recorded and indexed as a conveyance in the office of the clerk and recorder pursuant to title 70, chapter 21, M.C.A.

(4) Taxes:

General and special taxes and assessments for the year 2006; First Half are **PAID** in the amount of \$867.24; Second Half is **PAYABLE** in the amount of \$867.21, but not yet due. Tax Receipt No. 1010199

General and special taxes and assessments for the year 2007 are an accruing Lien not yet due or payable.

Dated: March 29, 2007 at 5:00 PM

STILLWATER ABSTRACT & TITLE COMPANY, INC.

By: _____

Shelly M. Roe

in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. Options to Payor Otherwise Settle Claims: Termination of Liability.

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To Payor Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

(b) To Payor Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To payor otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

7. Determination and Extent of Liability.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

The liability of the Company under this Guarantee

to the Assured shall not exceed the least of:

(a) the amount of liability stated in Schedule A or in Part 2;

(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgaged, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or

(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this Guarantee.

8. Limitation of Liability.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.

(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

9. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

10. Payment of Loss.

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

11. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

9/9
If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

12. Arbitration.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

13. Liability Limited to This Guarantee; Guarantee Entire Contract.

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

14. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at 1 First American Way, Santa Ana, California 92707.

332080

Middle Valley Sub,
Amended Tr. 5

Indorsement of Insurance

332080 SURVEY Pages: 0
STATE OF MONTANA STILLWATER COUNTY
RECORDED: 07/02/2007 11:41 KOI: SURVEY
Pauline Mishler CLERK AND RECORDER
FEE: \$8.00
BY: Pauline M. Mishler
NOT FILED



Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov
April 26, 2006

Keith E Brown
Brown And Associates
Box 608
Park City MT 59063

RE: Middle Valley Tract 5
Stillwater County
E.Q. #06-1845

Dear Mr Brown:

The plans and supplemental information relating to the water supply, sewage, solid waste disposal, and storm drainage (if any) for the above referenced division of land have been reviewed as required by ARM Title 17 Chapter 36(101-805) and have been found to be in compliance with those rules.

Two copies of the Certificate of Subdivision Plat Approval are enclosed. The original is to be filed at the office of the county clerk and recorder. The duplicate is for your personal records.

Development of the approved subdivision may require coverage under the Department's General Permit for Storm Water Discharges Associated with Construction Activity, if your development has construction-related disturbance of one or more acre. If so, please contact the Storm Water Program at (406) 444-3080 for more information or visit the Department's storm water construction website at <http://www.deq.state.mt.us/wqinfo/MPDES/StormwaterConstruction.asp>. Failure to obtain this permit (if required) prior to development can result in significant penalties.

Your copy is to inform you of the conditions of the approval. Please note that you have specific responsibilities according to the plat approval statement primarily with regard to informing any new owner as to any conditions that have been imposed.

If you wish to challenge the conditions of this Certificate of Subdivision Plat Approval, you may request a hearing before the Board of Environmental Review or the Department, pursuant to Section 76-4-126, MCA and the Montana Administrative Procedures Act.

If you have any questions, please contact this office.

Sincerely,

for Steve Kilbreath
Steve Kilbreath, Supervisor
Subdivision Review Section

SK/ML

cc: County Sanitarian
County Planning Board

332080

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
CERTIFICATE OF SUBDIVISION APPROVAL
(Section 76-4-101 et seq., MCA)

TO: County Clerk and Recorder
Stillwater County
Columbus, Montana

E.Q. #06-1845

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision known as **Middle Valley Tract 5 Amended Plat (Sunbird Valley Subdivision)**

A tract of land located in Section 33, Township 2 South, Range 23 East, P.M.M.,
Stillwater County, Montana

consisting of 6 Lots that was reviewed by personnel of the Permitting and Compliance Division,
and,

THAT the documents and data required by ARM Title 17 Chapter 36 have been submitted and
found to be in compliance therewith, and,

THAT the approval of the Plat is made with the understanding that the following conditions shall
be met:

THAT the Lot sizes as indicated on the Plat to be filed with the county clerk and recorder will not
be further altered without approval, and,

THAT each lot shall be used for a single family dwelling, and,

THAT the water system will consist of a well drilled to a minimum depth of 25 feet constructed in
accordance with the criteria established in Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM and
the most current standards of the Department of Environmental Quality, and,

THAT data provided indicates an acceptable water source at a depth of approximately 20 to 40 feet,
and,

THAT each pressure-dosed sewage treatment system will consist of a septic/dose tank with effluent
filter and subsurface drainfield of such size and description as will comply with Title 17, Chapter
36, Sub-Chapters 1, 3, and 6 ARM, and,

THAT each "At-grade" drainfield shall have an absorption area that is compliant with Circular
DEQ-4, Chapter 5 & 8 criteria (2004 Edition) and of sufficient size to provide the following
treatment area (Note: a 25% size reduction is allowed for gravel-less chambers):

Lots 1, 2, 3	900 sq. ft./3-bedroom dwelling or application rate = 0.33 gallons/square foot
Lot 4	750 sq. ft./3-bedroom dwelling or application rate = 0.4 gallons/square foot
Lots 5 & 6	1125 sq. ft./3-bedroom dwelling or application rate = 0.267 gallons/square ft.

THAT the bottom of the drainfield shall be at least four feet above the water table, and,

Middle Valley Lot 5 Amended
Subdivision Approval Page 2 of 2
EQ#06-1845
Stillwater County

THAT no sewage treatment system shall be constructed within 100 feet of the maximum highwater level of a 100 year flood of any stream, lake, watercourse, or irrigation ditch, nor within 100 feet of any domestic water supply source, and,

THAT water supply systems, sewage treatment systems and storm drainage systems will be located as shown on the approved plans, and,

THAT all sanitary facilities must be located as shown on the attached lot layout, and,

THAT the developer and/or owner of record shall provide the purchaser of property with a copy of the Plat, approved location of water supply and sewage treatment system as shown on the attached lot layout, and a copy of this document, and,

THAT instruments of transfer for this property shall contain reference to these conditions, and,

THAT plans and specifications for any proposed sewage treatment systems will be reviewed and approved by the county health department and will comply with local regulations and ARM, Title 17, Chapter 36, Subchapters 3 and 9, before construction is started.

THAT departure from any criteria set forth in the approved plans and specifications and Title 17, Chapter 36, Sub-Chapters 1, 3, and 6 ARM when erecting a structure and appurtenant facilities in said subdivision without Department approval, is grounds for injunction by the Department of Environmental Quality.

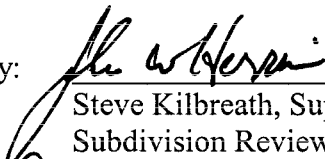
Pursuant to Section 76-4-122 (2)(a), MCA, a person must obtain the approval of both the State under Title 76, Chapter 4, MCA, and local board of health under section 50-2-116(1)(i), before filing a subdivision plat with the county clerk and recorder.

YOU ARE REQUIRED to record this certificate by attaching it to the Plat filed in county property records office as required by law.

DATED this 25th day of April, 2006.

Richard Oppen
DIRECTOR

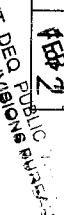
By:


Steve Kilbreath, Supervisor
Subdivision Review Section
Permitting and Compliance Division
Department of Environmental Quality



Owner's Name: Wayne Hertzler

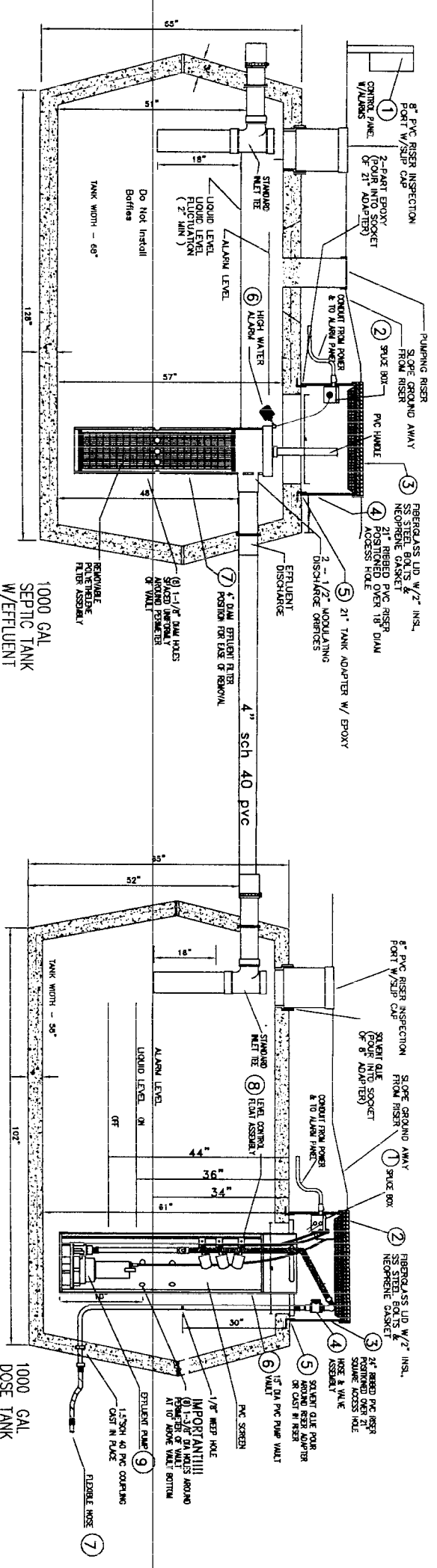
6-15



DATE	REVISIONS	BY	DATE
9/7/05	revise draft/inadequate	keb	2/15/06
VON	revise milking zones	keb	2/14/06
SANTITARY SITE PLAN			

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2006



1000 GAL
SEPTIC TANK
W/EFFLUENT
FILTER
NO SCALE

1000 GAL
DOSE TANK
WITH EFFLUENT
PUMP
NO SCALE

DESIGN CRITERIA

ORFICE DESIGN - 1/8" DIA X 5' O.C.
DAILY WASTEWATER LOADING - 300 GPD
DOSE SIZE - 168 GAL.
DOSE RATE - 22.1 GPM
TOTAL DESIGN HEAD - 14.8 FEET
1" LEVEL DROP = 21 GAL.
DOSE LEVEL DROP = 8.0"
STORAGE ABOVE ALARM = 630 GAL.
DRAINBACK VOLUME = 5 GALLONS

CONSTRUCTION NOTES:

BED TANKS WITH CRUSHED GRAVEL
TANKS TO BE HYDRAULICALLY TESTED
LATERALS TO BE SQUIRT TESTED

MATERIAL SUPPLIER NOTE:

FLOAT SPACING IS NOT
STANDARD. MUST BE CUSTOM
CONFIGURED. PUMP VALVE
INLET MEASUREMENT IS CUSTOM
NO SUBSTITUTIONS WITHOUT WRITTEN
APPROVAL FROM ENGINEER.

TANK SUPPLIER NOTE:

USE SAME INVERT HEIGHT FOR
SEPTIC TANK DISCHARGE AND
DOSE TANK INLET. CAST ACCESS HOLE
TO INDICATED DIMENSIONS. REMOVE
WATERBOLTS.

SEPTIC TANK

EQUIPMENT INDEX	
1	PUMP PANEL OSI S1 OR CONCENTRIC MOD.100
2	SPRUE BOX SBI
3	SPRUE BOX FL21G NS2
4	UD
5	RISER RR2115 (Cost is item acceptable)
6	TANK ADAPTER BR1221 ADHP10 ME4
7	HIGH WATER ALARM FLOAT
8	EFFLUENT FILTER OSI FT 5 0436-28

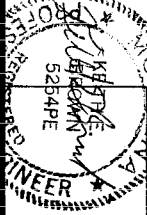
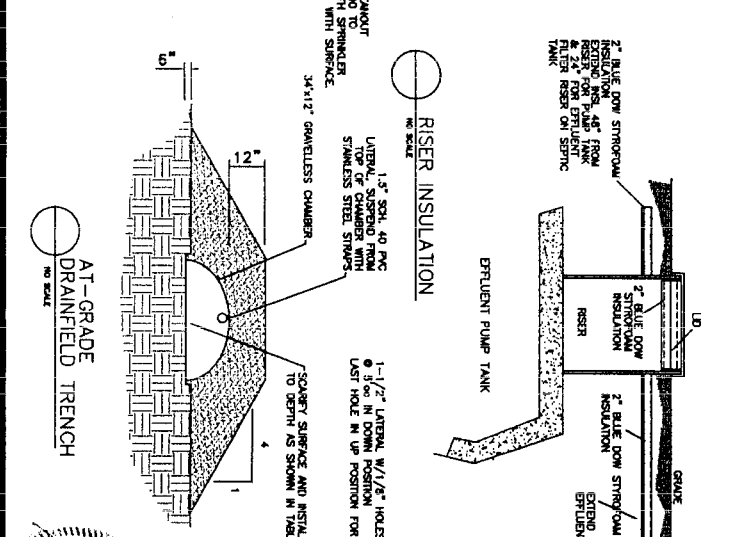
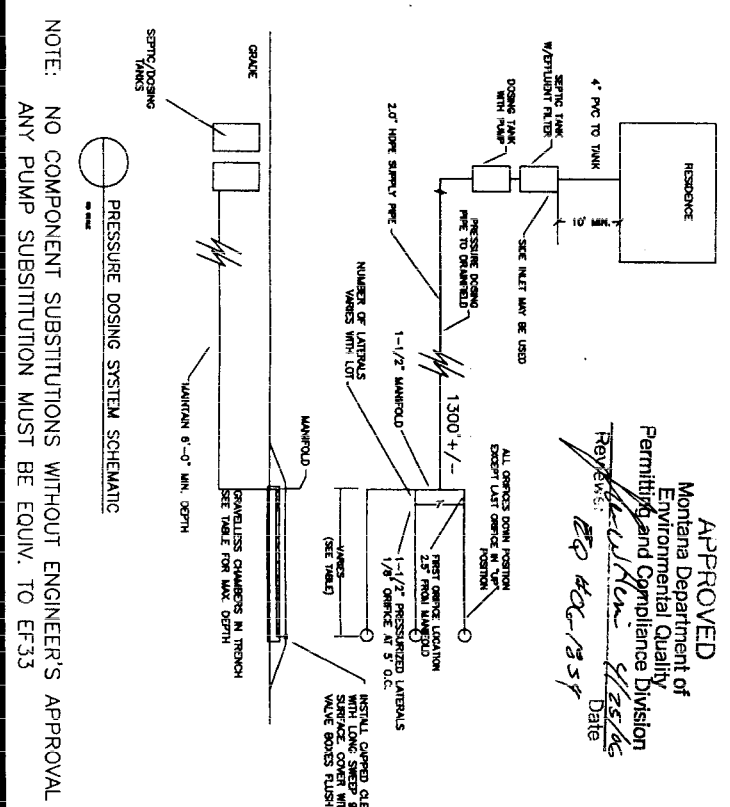
DOSE TANK

DOSE TANK

EQUIPMENT INDEX	
1	SPRUE BOX Orifice SB 4
2	UD FL24G NS2 (Alternate equal lid acceptable)
3	RISER RR2420 (Cost is item acceptable)
4	HOSE & VALVE ASSEMBLY HV 2009C-L CRT150MT
5	TANK ADAPTER 24RRTA ADHP10
6	PUMP VALVE OSI MODEL SV1560-10
7	FLEXIBLE HOSE OSI HX200
8	FLOAT ASSEMBLY OREGON MFT3
9	PUMP GRUNDFOS EFS0 120 VOLT AC

TABLE - LOT SPECIFIC DRAINFIELD DESIGN

LOT	Area (sq. ft.)	Depth of Chamber
1	75 x 36	6"
2	75 x 36	6"
3	75 x 36	6"
4	75 x 36	6"
5	100 x 36	6"
6	100 x 36	6"



RECEIVED
FEB 23 2006
AMENDED TRACT 5-MIDDLE VALLEY SUB
STILLWATER COUNTY
9/5/05
LOW HEAD PRESSURE DISTRIBUTION
LOTS 1, 2, 3, 4, 5, 6

332080

Middle Valley Sub.

Amended Tr. S

D.E.Q. Approval

332080 SURVEY Pages: 0

STATE OF MONTANA STILLWATER COUNTY

RECORDED: 07/02/2007 11:41 KOI: SURVEY

Pauline Mishler CLERK AND RECORDER

FEE: \$8.00

BY: *Pauline Mishler*

TO: FILED

6/6

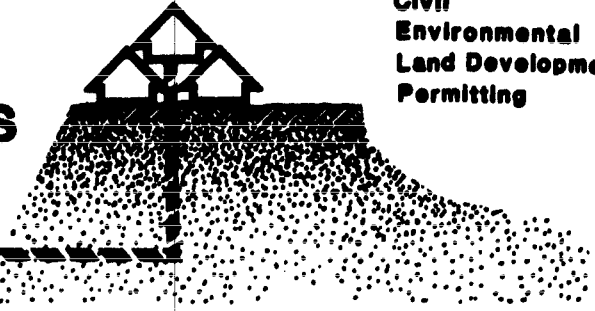
332080

Brown & associates

ENGINEERING AND PLANNING

P.O. Box 700, Park City, MT 59063 (406) 633-2500

Civil
Environmental
Land Development
Permitting

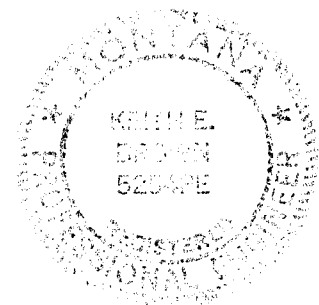


GRADING AND DRAINAGE PLAN

OCTOBER 2005
Revised 2/15/06

Amended Middle Valley Tract 5
(Sunbird Valley Subdivision)
Near Park City, Stillwater County

 **Date** 4/16/07
Keith E. Brown, P.E.



AMENDED TRACT 5 MIDDLE VALLEY SUBDIVISION - March 2005**SITE DESCRIPTION****Introduction**

The Amended Tract 5 Middle Valley Subdivision is proposed for existing Tract 5 of Middle Valley Subdivision and totals 25.41 acres. This tract was originally created for residential/commercial uses. The site is located about 1.5 miles east of the community of Park City in the NE1/4 of Section 33, T2S, R23E. Six lots are proposed. **Figure 1** shows the project location on a USGS topography map.

Surface Features

The area is gently sloping from west to east with a regional slope of 0.47 percent. The site has native grasses and forbes and is not irrigated. The Yellowstone River is located about 4400 feet south of the south boundary of the subdivision. There is an irrigation ditch (Old Mill ditch) along the northwest boundary, and a dewatering and irrigation wastewater ditch (Keefer Drain) located on the property.

NRCS Soils Data

The publication, "Soil Survey of Stillwater County Area, Montana" by USDA-SCS was referenced for area soils information. The SCS soil mapping shows three series: the Attewan series, (12) Attewan loam, seeped, 0-4% slopes; (13) Attewan-Beaverell gravelly loams, 0-4% slopes; and the Yamac series, (67) Yamac loam, 0-2% slopes.

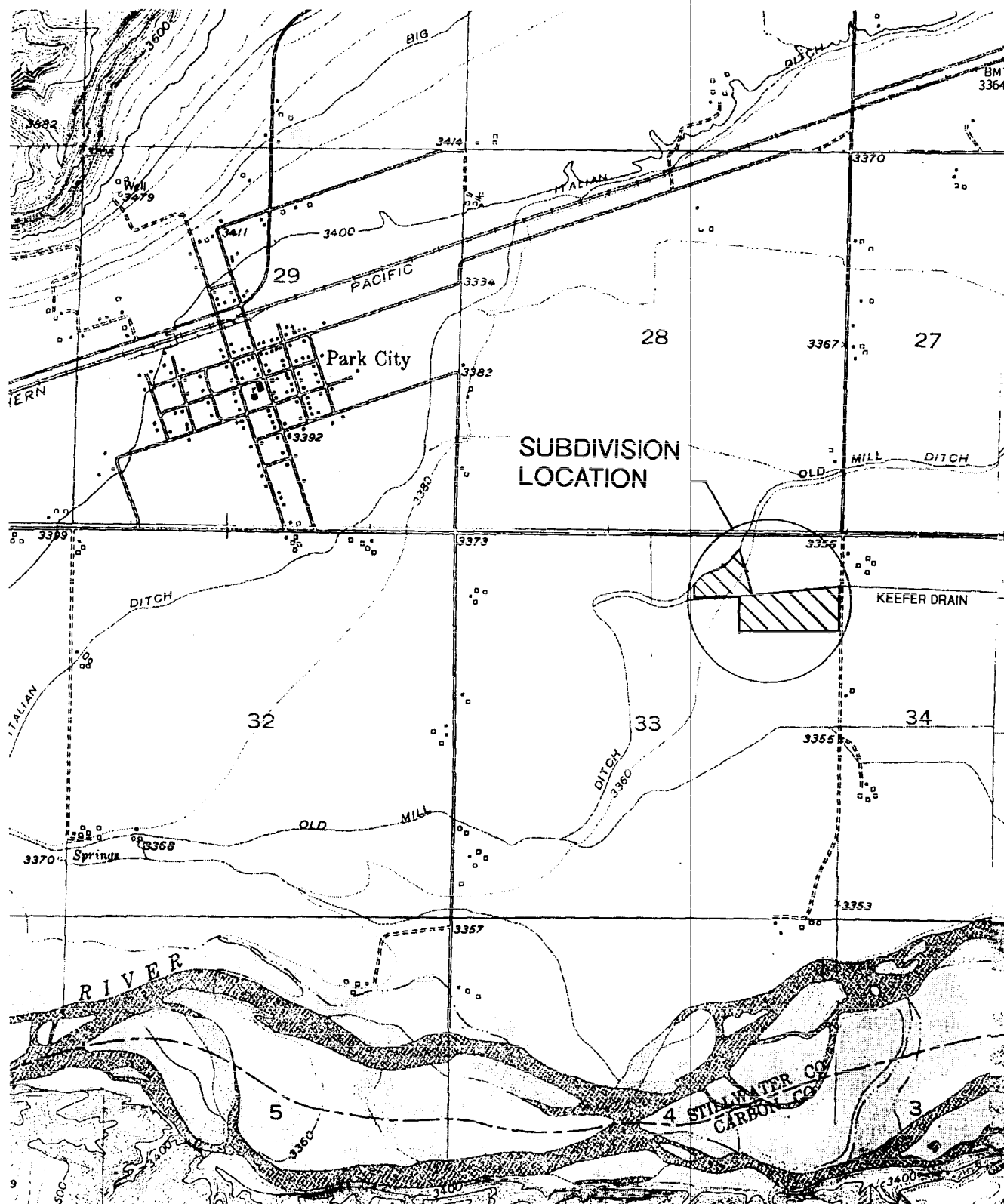
The area proposed for all septic drainfields occupies the Attewan-Beaverell gravelly loam based on the soil map. The soil test pit results validate this mapping configuration.

The description of soils notes that the Attewan-Beaverell loam is a nearly level and gently sloping soil which occupies stream terraces. Surface runoff is slow to medium. Water Erosion is slight. **Figure 2** shows the soils distribution over the project area.

The Attewan series is characterized as follows:

0 - 4"	Loam
4" - 9"	Loam.
9" - 18"	Clay loam.
18" - 28"	Loam
28" - 60"	Very Gravelly Sand

332080

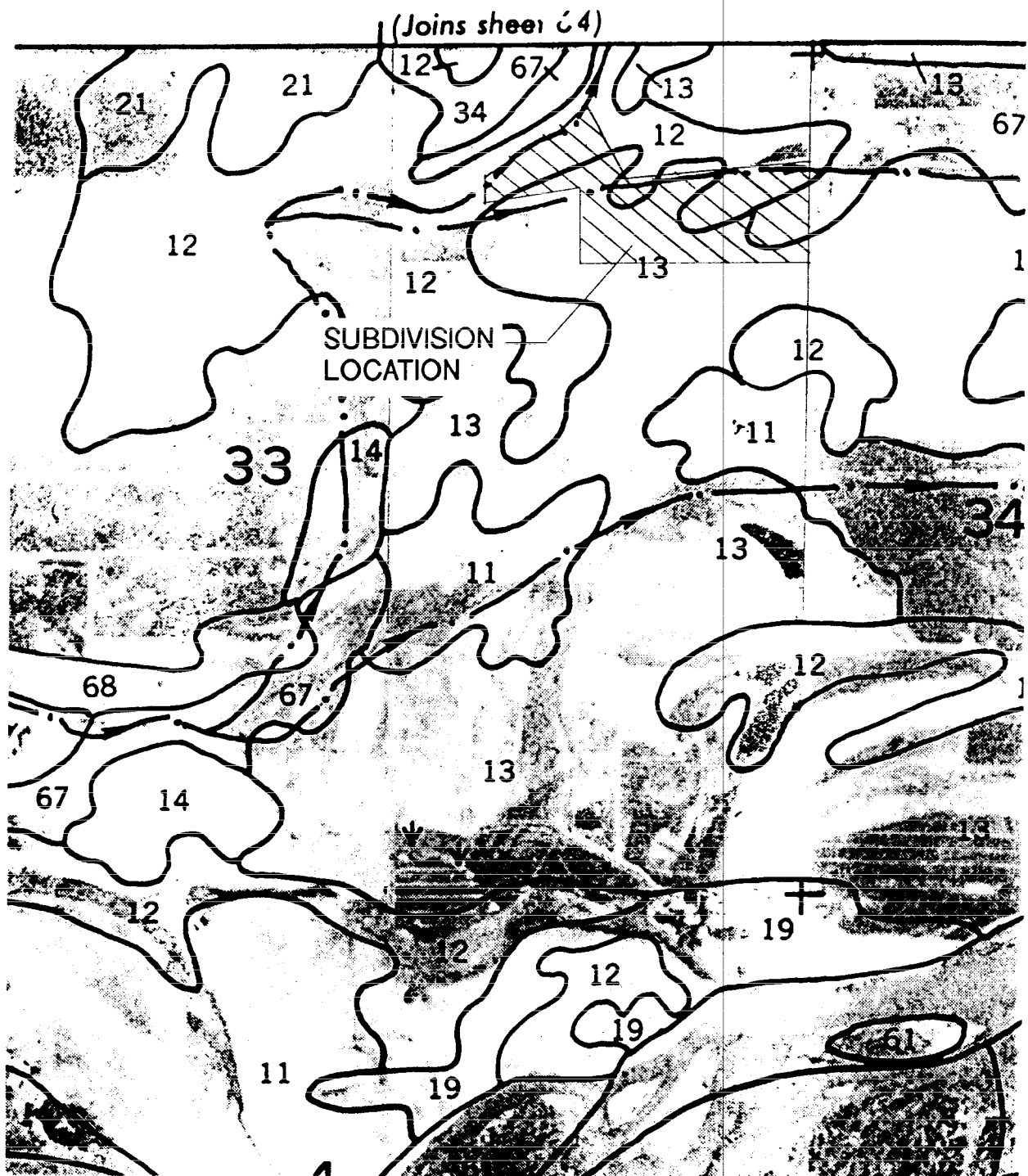


Silesia and Mont Aqua Quads
 Park City and Laurel Quads
 Scale 1" = 2000'

DATE 3/3/05	PROJECT Sunbird Valley Subdivision Park City Area, Stillwater County, MT	 BROWN & ASSOCIATES BOX 608, PARK CITY, MT 59063 civil sanitary design planning (406) 633-2500
SCALE As Noted	TITLE USGS Vicinity Map	

FIGURE

1



Soil Survey of Stillwater County, Montana
Scale 1" = 1000'

DRAWN VON CHECKED KEB DATE 3/3/05 SCALE As Noted	PROJECT Sunbird Valley Subdivision Park City Area, Stillwater County, MT TITLE Soils Distribution Map	FIGURE 2 BROWN & ASSOCIATES  BOX 608, PARK CITY, MT 59063 civil sanitary design planning (406) 633-2500
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The description of soils for the Attewan-Beaverel gravelly loam notes a nearly level and gently sloping soils on stream terraces. Surface runoff is medium, and water erosion is slight.

The Attewan-Beaverel series is characterized as follows:

- 0 - 6" very gravelly loam
- 6" - 12" very gravelly heavy loam
- 12" - 60" very gravelly coarse sand with cobbles and pebbles.

The Yamac loam soils description notes a nearly level soil on stream terraces and alluvial fans. Surface runoff is medium, and the hazard of water erosion is slight.

The Yamac series is characterized as follows:

- 0 - 8" loam
- 8" - 15" loam
- 15" - 20" loam
- 20" - 36" loam
- 36" - 48" loam
- 48" - 60" clay loam

PROPOSED ROAD PLAN

Lots 1,2 and 3 have access directly to Schreiner Road. Lots 4, 5, and 6 are accessed by the proposed interior road which ends in a cul-de-sac. The length is 603 feet in length and the travel surface width is 24 feet. A swale design along side the travelway is one foot deep and ten feet wide. The surface of the swale will be replanted in grass.

The lot owner is responsible for providing the gravel drive to each dwelling structure. One new culvert is proposed for the interior road approach to Schreiner Road. The individual lots facing Schreiner Road need only install an approach with a slight dip and no culvert to allow very large stormwater events to runoff towards the Keefer Drain. The gravel under the swales allow fast stormwater disposal. Major stormwater events much larger than the design storm would discharge runoff to the Keefer Drain for ultimate discharge to the Yellowstone River.

PROPOSED DRAINAGE PLAN

Stormwater drainage calculations for the Sunbird Valley Subdivision are based

on surveyed elevations and historical drainage patterns. See **Figure 3, "Stormwater Plan"**. The site consists of a 25.41 acre parcel which is divided into six parcels. The six parcels are designed for residential improvements. The slope is west to east and gentle. The property has a high point at the northwest corner and a low point on the east side adjacent to Schreiner Road. At present a constructed low area with corresponding berm exists in the area of Lots 1 and 2. This area will be recontoured to remove the berm and partially fill the low area. The remainder of the low area can be incorporated into the side yards between Lots 1 and 2. Otherwise the ground slope is flat to slightly sloped and has a range of 0 - 2%. Stormwater runoff, from very large stormwater events, will flow into the Keefer Drain which transects the property from west to east, and continue along the normal road drainage route to the Yellowstone River as it does now.

Five of the six parcels are unimproved. The sixth parcel has the developer's home. Ground cover is native grasses. Soils are loam and clay loam overlying gravelly sand. SCS soil data is included at the end of this report. The SCS data indicates that the soils are suitable for roads and building foundations as well as supportive of septic systems.

Rainfall data was obtained from the National Weather Service for the Park City area and a design storm frequency of 2 year, 1 hour occurrence was used. An intensity of 0.54 in/hr. resulted for this storm.

The methodology used for peak flows, total quantity generated and time of concentration calculations consisted of manipulations of the "Rational Method" for stormwater flow projections.

The project area is treated as two contributing areas. Area #A consists of 7.80 acres on the north side of the Keefer Drain; while Area #B is the remainder of the 25 acres (17.61), south of the Keefer Drain. Area #A will not be changed, while Area #B will have the addition of five new homes. Sheet flow at very low velocity is the resulting flow pattern characteristic. No channeling of runoff is present. Under the design storm event all of the increase in stormwater is retained on-site by landscape improvements provided by the lot buyers, and by percolation into the subsoil along the proposed interior road and existing Schreiner Road. Very large storm events will discharge runoff to the Keefer Drain and then towards the Yellowstone River, as presently occurs. The SCS soil data supports this runoff potential assessment.

CALCULATIONS

The following calculations have been changed slightly from the original submittal, and expanded to include some recommended values. In addition, a second analysis was performed using the spread sheet provided by John Herrin of DEQ.

Rainfall Intensity

2 yr. 1 hr. storm Park city Area = 0.54 inches

Runoff Coefficients

The method used herein takes the partial area times the runoff coefficient for each difference surface. These products are added and divided by the total area in an identified drainage area. The result is an "area weighted runoff coefficient which acts exactly like the individual units added together.

SURFACE AREA ASSUMPTIONS**Area A**

Unimproved Pasture 7.8 ac. Surface is unimproved pasture for both undeveloped and developed cases.

Area B**(Unimproved)**

Unimproved Pasture 16.47 ac
 Landscaped yards 1.0 ac. (existing lawn and trees)
 Rooftop 0.07 ac. (3000 s.f. existing home and shed)
 Gravel Driveway 0.07 ac. (381 feet 8 foot wide exist driveway)

(Developed)

Unimproved Pasture 10.51 ac.
 Landscaped Yards 6.0 ac. (1.0 acre exist and 5.0 ac. proposed)
 Rooftop 0.41 ac. (3000 s.f. exist and 15000 s.f. new)
 Gravel Driveway 0.36 ac. (0.07 ac exist and 0.29 ac. new)
 Gravel Street 0.33 ac. (600' new street with grassed swales)

COEFFICIENT CALCULATIONS**(Unimproved Conditions)****Area "A" (7.8 ac.)**

Unimproved Pasture	0.30	Area = 7.80 acres
Area weighted runoff coef. = $\frac{(7.8 \text{ ac} \times 0.3)}{7.8 \text{ ac}} = 0.30$		

Area "B" (17.61 ac.)

Unimproved Pasture	0.30	Area = 16.47 acres
Landscaped yards	0.10	Area = 1.00 acres
Rooftop	0.90	Area = 0.07 acres
Gravel Driveway	0.80	Area = 0.07 acres

Area Weighted runoff coef. =

$$\frac{(0.3 \times 16.47 \text{ ac}) + (0.1 \times 1.0 \text{ ac}) + (0.9 \times 0.07) + (0.8 \times 0.07)}{17.61} = 0.293$$

(Developed Conditions)

		Area A	Area B
Unimproved Pasture	0.30	7.80 acres	10.51 acres
Landscaped yards	0.10	0.00 acres	6.00 acres
Rooftop (Impervious)	0.90	0.00 acres	0.41 acres
Gravel Driveways	0.80	0.00 acres	0.36 acres
Gravel Road	0.80	0.00 acres	0.33 acres

Area weighted runoff coef. avg. Area A =

$$(0.3 \times 7.8 \text{ ac.}) + (0.1 \times 0 \text{ ac.}) + (0.9 \times 0 \text{ ac.}) + (0.8 \times 0 \text{ ac.}) + (0.8 \times 0 \text{ ac.}) = 0.30$$

Area weighted runoff coef. avg. Area B =

$$\frac{(0.3 \times 10.51 \text{ ac}) + (0.1 \times 6.0 \text{ ac}) + (0.9 \times 0.41 \text{ ac.}) + (0.8 \times 0.69 \text{ ac})}{17.61} = 0.265$$

Time of Concentration

Area A

Reach	Slope	Length	Time
AB	0.50%	747'	52 min

Area B

Reach	Slope	Length	Time
AB	0.50%	1383'	100 min

Peak Flow Rates

$$Q = C_f C I A$$

C_f = Factor for size of area = 1.0

Unimproved Conditions

Area A

$$Q = 1 \times 0.30 \times 0.54 \times 7.80 \text{ ac}$$

$$Q = 1.26 \text{ cfs or } 567 \text{ gpm}$$

$$\text{Peak Runoff Rate} = 567 \text{ gpm}$$

Area B

$$Q = 1 \times 0.293 \times 0.54 \times 17.61 \text{ ac}$$

$$Q = 2.786 \text{ cfs or } 1250 \text{ gpm}$$

Peak Runoff Rate = 1250 gpm

Total = 1817 gpm or 4.05 cfs

Developed Subdivision

Area A

$Q = 1 \times 0.30 \times 0.54 \times 7.80 \text{ ac}$

$Q = 1.26 \text{ cfs or } 567 \text{ gpm}$

Peak Runoff Rate = 567 gpm

Area B

$Q = 1 \times 0.265 \times 0.54 \times 17.61 \text{ ac}$

$Q = 2.52 \text{ cfs or } 1131 \text{ gpm}$

Peak Runoff Rate = 1131 gpm

Total = 1698 gpm or 3.78 cfs

Change from undeveloped state is decreased $Q = -119 \text{ gpm or } 0.27 \text{ cfs}$

Total Volume of Runoff

Volume $V = C \times \text{Rainfall} \times \text{Area}$

Unimproved Condition

Area A $V = 0.30 \times .54 \times 3600 \times 7.80 = 4549 \text{ cubic feet (168.5 cubic yard)}$

Area B $V = 0.293 \times .54 \times 3600 \times 17.61 = 10,031 \text{ cubic feet (371.5 cubic yard)}$

Total = 14,580 cubic feet or 540 cubic yard

Developed Subdivision

Area A $V = 0.30 \times 0.54 \times 3600 \times 7.80 = 4549 \text{ cubic feet (168.5 cubic yard)}$

Area B $V = 0.265 \times 0.54 \times 3600 \times 17.61 = 9072 \text{ cubic feet (336 cubic yard)}$

Total = 13,621 cubic feet or 504.5 cubic yard

Change from undeveloped state is decreased $V = -35.5 \text{ c.y. or } 6.5\%$

The development has decreased the theoretical runoff from this tract by about 6%.

A second analysis was performed using the DEQ provided spreadsheet program, for comparison purposes. The first run was made using the above values. The result from the spreadsheet was exactly the same as the above results, discounting rounding error. A second run using only $\frac{1}{2}$ acre of landscaped area for each of the five new homes, instead of one acre was then performed. The existing home which has one acre

of existing landscaping stayed the same. The results showed an increase of 32 cubic feet or about one yard of stormwater, after development. It would be fair to estimate that the average landscaping will be more than one-half acre for each of the new homes. It should be noted that for new homes in the area of size range 1 to 3 acres, all of the property is landscaped. Therefore our assumption of more than ½ acre of landscaping is valid. The spreadsheet analysis results are attached.

Natural Detention and Disposal

The drainage swale along Sunbird Valley Road provides stormwater retention due to dikes in the swales created from installation of driveways on a virtually flat roadway. The storage volume per lineal foot of swale is:

$$5 \text{ cu.ft.} \times 7.48 \text{ gal/cu.ft.} = 37.4 \text{ gal/lineal foot}$$

The road frontage along Sunbird Valley Road is 603 feet on one side facing the lots. The **storage capacity** is:

$$603' \times 37.4 \text{ gal/lf} = \mathbf{22,552 \text{ gallons or 112 cubic yards}}$$

In addition there is increased percolation due to the gravel texture of the drainage swales which will allow disposal of the stormwater runoff into the subsurface. The **percolation volume** in six hours is:

$$\frac{0.1 \text{ inch/min} \times 10 \text{ sq.ft./lf} \times 7.48 \times 603' \times 60 \text{ min}}{12} = \mathbf{22,552 \text{ gal. or 112 cubic yard}}$$

The swale design detail is shown on **Figure 3**. The ability of the drainage swales to store and percolate stormwater into the subsurface is substantial. The property has an existing house occupied by the developer for five years. In this time the tract has evidenced no runoff leaving the parcel for the design storm. For extreme storm events, stormwater will be intercepted by the Keefer Drain, or Schreiner Road.

There is negligible impact to the Yellowstone River due to no increase in runoff rate attributable to the proposed development. There is no impact to surrounding agricultural or residential property.

No stormwater retention or detention ponds are proposed or required.

Middle Valley Tr 5 Amended - Area A
REQUIRED STORMWATER DETENTION VOLUME:

RELATIVE IMPERVIOUSNESS FACTORS:
 PAVED AREAS/STRUCTURES = (C Range)
 GRAVELED AREAS = (0.8-0.9) 0.9
 UNIMPROVED RANGELAND = (0.35-0.8) 0.8
 LANDSCAPED (lawn, shrubs, trees) = (0.15-0.4) 0.3
 = (0.1-0.3) 0.1

2 YEAR -1HOUR STORM EVENT:

I 0.54 in/hr (Input Site Rainfall Intensity 2-yr 1-hr)
T 3600 sec/hr

NEW SITE LAYOUT

AREAS:
 TOTAL AREA OF WATERSHED = AREA (Ft2) 7.80 acres
 339,768 sq. ft.
 PAVED AREAS/STRUCTURES = Input Only
 GRAVELED AREAS = 0.00 sq. ft. 0.00 acres
 UNIMPROVED = 0.00 sq. ft. 0.00 acres
 LANDSCAPED = 339768.00 sq. ft. 7.80 acres
 TOTAL = 0.00 sq. ft. 0.00 acres
 = 339768.00 sq. ft. 7.80 acres

VOLUMES REQUIRED:

Volume of runoff = $(C \cdot I \cdot A) \cdot T$
 Total Volume Difference = New Volume - Existing Volume

PAVED AREAS/STRUCTURES = 0.00 C.F.
 GRAVELED AREAS = 0.00 C.F.
 UNIMPROVED = 4548.94 C.F.
 LANDSCAPED = 0.00 C.F.
 TOTAL VOLUME = 4548.94 C.F.
 FLOW IN C.F.S. = 1.26 C.F.S.

TOTAL VOLUME DIFFERENCE = **0 C.F.**
TOTAL FLOW IN C.F.S. = 0.00 C.F.S.

EXISTING SITE LAYOUT

AREA (Ft2)
 Input Only
 0.00 sq. ft. 0.00 acres
 0.00 sq. ft. 0.00 acres
 339768.00 sq. ft. 7.80 acres
 0.00 sq. ft. 0.00 acres
 339768.00 sq. ft. 7.80 acres

0.00 C.F.
 0.00 C.F.
 4548.94 C.F.
 0.00 C.F.
 4548.94 C.F.
 1.26 C.F.S.

0 C.Y.

0.00 C.Y.
 0.00 C.Y.
 168.48 C.Y.
 0.00 C.Y.
 168.48 C.Y.

NEW LOTS - 12 ACRES LANDSCAPING EACH

332080

Middle Valley Tr 5 Amended - Area B
REQUIRED STORMWATER DETENTION VOLUME:

RELATIVE IMPERVIOUSNESS FACTORS: (C Range)
PAVED AREAS/STRUCTURES = (0.8-0.9) 0.9
GRAVELED AREAS = (0.35-0.8) 0.8
UNIMPROVED RANGELAND = (0.15-0.4) 0.3
LANDSCAPED (lawn, shrubs, trees) = (0.1-0.3) 0.1

2 YEAR -1HOUR STORM EVENT: I 0.54 in/hr (Input Site Rainfall Intensity 2-yr 1-hr)
T 3600 sec/hr

NEW SITE LAYOUT			EXISTING SITE LAYOUT		
AREAS:			AREA (Ft2)		
TOTAL AREA OF WATERSHED	=	767,092 sq. ft.	17.61 acres	Input Only	3000.00 sq. ft.
PAVED AREAS/STRUCTURES	=	18000.00 sq. ft.	0.41 acres		0.07 acres
GRAVELED AREAS	=	30056.00 sq. ft.	0.69 acres		0.07 acres
UNIMPROVED	=	566576.00 sq. ft.	13.01 acres		16.47 acres
LANDSCAPED	=	152460.00 sq. ft.	3.50 acres		1.00 acres
TOTAL	=	767092.00 sq. ft.	17.61 acres		17.61 acres

VOLUMES REQUIRED: Volume of runoff = (C*I*A)*T
Total Volume Difference = New Volume - Existing Volume

PAVED AREAS/STRUCTURES	=	722.97 C.F.	26.78 C.Y.	120.50 C.F.	4.46 C.Y.
GRAVELED AREAS	=	1073.07 C.F.	39.74 C.Y.	108.89 C.F.	4.03 C.Y.
UNIMPROVED	=	7585.53 C.F.	280.95 C.Y.	9605.92 C.F.	355.77 C.Y.
LANDSCAPED	=	680.40 C.F.	25.20 C.Y.	194.40 C.F.	7.20 C.Y.
TOTAL VOLUME	=	10061.97 C.F.	372.67 C.Y.	10029.71 C.F.	371.47 C.Y.
FLOW IN C.F.S.	=	2.79 C.F.S.		2.79 C.F.S.	

TOTAL VOLUME DIFFERENCE = **32 C.F.** 1 C.Y.
TOTAL FLOW IN C.F.S. = 0.01 C.F.S.

Middle Valley Tr 5 Amended - Area B
REQUIRED STORMWATER DETENTION VOLUME:

RELATIVE IMPERVIOUSNESS FACTORS: (C Range)
 PAVED AREAS/STRUCTURES = (0.8-0.9) 0.9
 GRAVELED AREAS = (0.35-0.8) 0.8
 UNIMPROVED RANGELAND = (0.15-0.4) 0.3
 LANDSCAPED (lawn, shrubs, trees) = (0.1-0.3) 0.1

2 YEAR -1HOUR STORM EVENT:

I 0.54 in/hr (Input Site Rainfall Intensity 2-yr 1-hr)
T 3600 sec/hr

NEW SITE LAYOUT

EXISTING SITE LAYOUT

AREAS:

TOTAL AREA OF WATERSHED	=	AREA (Ft²)	17.61 acres	
		Input Only		
PAVED AREAS/STRUCTURES	=	18000.00 sq. ft.	0.41 acres	0.07 acres
GRAVELED AREAS	=	30056.00 sq. ft.	0.69 acres	0.07 acres
UNIMPROVED	=	457676.00 sq. ft.	10.51 acres	16.47 acres
LANDSCAPED	=	261360.00 sq. ft.	6.00 acres	1.00 acres
TOTAL	=	767092.00 sq. ft.	17.61 acres	17.61 acres

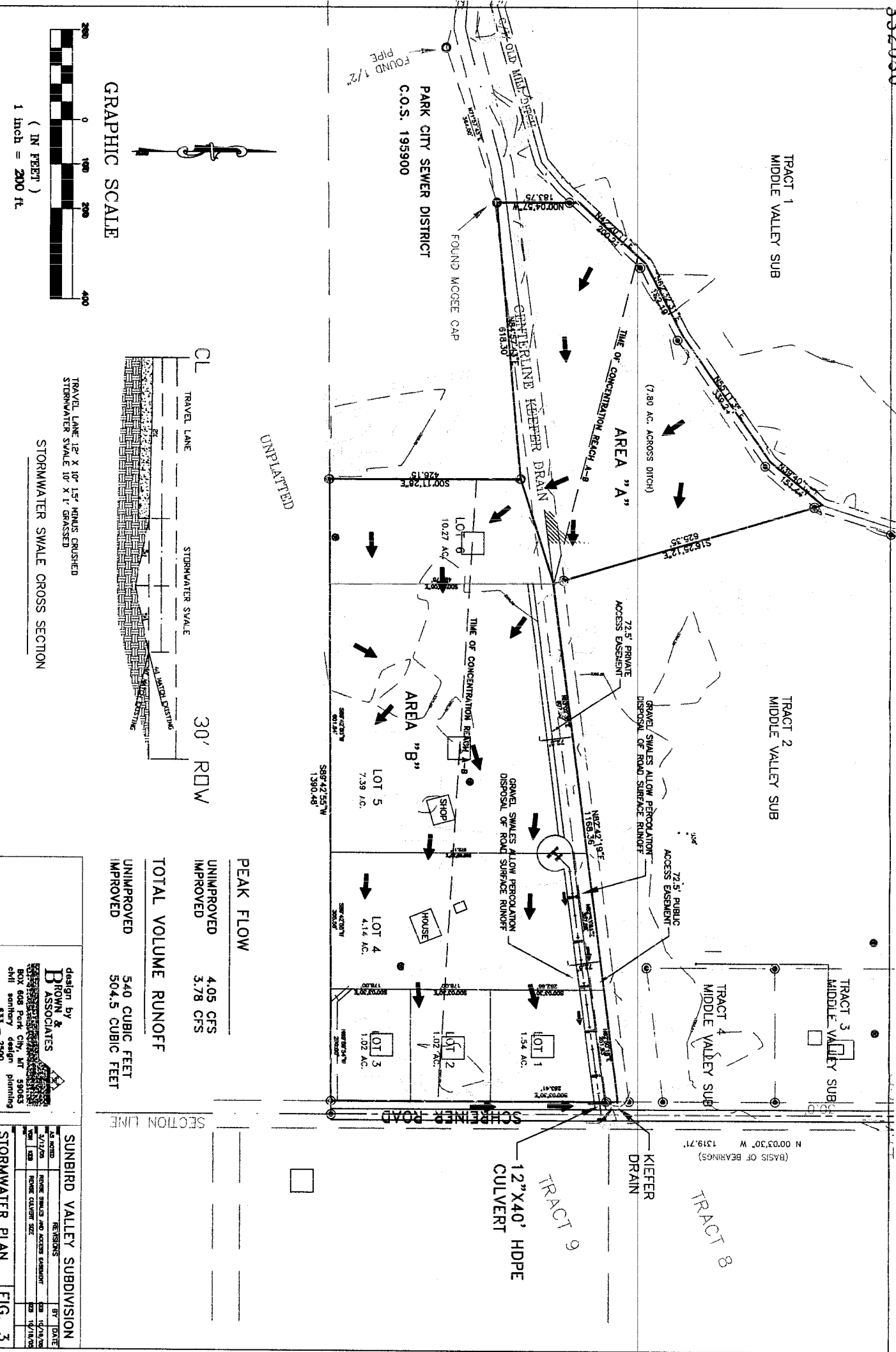
VOLUMES REQUIRED:

Volume of runoff = (C*I*A)*T
 Total Volume Difference = New Volume - Existing Volume

PAVED AREAS/STRUCTURES	=	722.97 C.F.	26.78 C.Y.	120.50 C.F.	4.46 C.Y.
GRAVELED AREAS	=	1073.07 C.F.	39.74 C.Y.	108.89 C.F.	4.03 C.Y.
UNIMPROVED	=	6127.54 C.F.	226.95 C.Y.	9605.92 C.F.	355.77 C.Y.
LANDSCAPED	=	1166.40 C.F.	43.20 C.Y.	194.40 C.F.	7.20 C.Y.
TOTAL VOLUME	=	9089.98 C.F.	336.67 C.Y.	10029.71 C.F.	371.47 C.Y.
FLOW IN C.F.S.	=	2.52 C.F.S.		2.79 C.F.S.	

TOTAL VOLUME DIFFERENCE = **-940 C.F.** **-35 C.Y.**
TOTAL FLOW IN C.F.S. = **-0.26 C.F.S.**

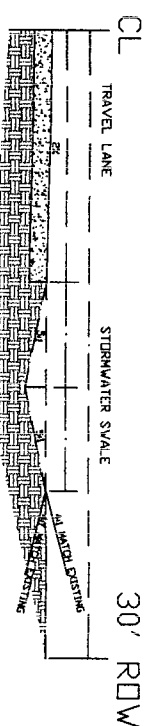
332080



GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.



PEAK FLOW

UNIMPROVED 4.05 CFS
IMPROVED 3.78 CFS

TOTAL VOLUME RUNOFF

UNIMPROVED 540 CUBIC FEET
IMPROVED 504.5 CUBIC FEET

SECTION LINE

design by
BROWN & ASSOCIATES
P.O. BOX 608 Park City, UT 84060
civil sanitary design planning
833 - 2500

SUNBIRD VALLEY SUBDIVISION			
NO.	DATE	BY	DATE
1	10/1/00	DESIGNED AND CHECKED	10/1/00
2	10/1/00	ENGINEER	10/1/00
3	10/1/00	ENGINEER	10/1/00
4	10/1/00	ENGINEER	10/1/00
5	10/1/00	ENGINEER	10/1/00
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98	10/1/00	ENGINEER	10/1/00
99	10/1/00	ENGINEER	10/1/00
100	10/1/00	ENGINEER	10/1/00

15/15

332080

Middle Valley Sub.
Amended Tr. 5

Grading & Drainage Plan

332080 SURVEY Pages: 0

STATE OF MONTANA STILLWATER COUNTY

RECORDED: 07/02/2007 11:41 KOI: SURVEY .

Pauline Mishler CLERK AND RECORDER

FEE: \$8.00

BY: Pauline Mishler

TO: FILED

332080

SECRETARY OF STATE

STATE OF MONTANA

BRAD JOHNSON



PRIORITY

Montana State Capitol
PO Box 202801
Helena, MT 59620-2801
(406)444-3665
<http://www.sos.mt.gov>

BROWN & ASSOCIATES
ENGINEERING AND PLANNING
PO BOX 700
PARK CITY MT 59063

RE: SUNBIRD HOMEOWNERS
ASSOCIATION
ARTICLES OF INCORPORATION
Filing Date: March 23, 2007
Filing Number: D-167396 - 766273

March 26, 2007

Dear Sir or Madam:

I've approved the filing of the documents for the above named entity. The document number and filing date have been recorded on the original document. This letter serves as your certificate of filing and should be maintained in your files for future reference.

Thank you for giving this office the opportunity to serve you. If you have any questions in this regard, or need additional assistance, please do not hesitate to contact the Business Services Bureau professionals at (406) 444-3665.

Sincerely,

A handwritten signature in cursive script that reads "Brad Johnson".

BRAD JOHNSON
Secretary of State

NOTICE

The following Amended Bylaws were adopted on April 15, 2007,
at the first meeting of the Sunbird Homeowner's Association.

Janna J. Hertzler
Secretary

6-10-07
Date

Mailing Address:

Sunbird Homeowner's Association
110 Schreiner Road
Park City, MT 59063

BYLAWS**SUNBIRD HOMEOWNER'S ASSOCIATION****Section 1.**

An association is hereby established known as "**Sunbird Homeowner's Association**", hereinafter referred to as the "Association". The Association has been formally incorporated under the laws of the State of Montana (D-167396-766273).

Section 2.

Definitions of words in these Bylaws shall be the same as stated in the "**DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS FOR Amended Tract 5 Middle Valley Subdivision**" for the affected Tracts.

"Covenants" shall refer to the above named document as recorded in the Stillwater Clerk and Recorder Office.

Section 3.

Every owner or contract purchaser of a tract on which the DECLARANT has placed covenants requiring membership in the Sunbird Homeowner's Association, shall be a member of the Association. Membership shall be appurtenant to and may not be separate from the ownership of any such tract. Each owner shall be responsible for advising the Association of their acquisition of ownership, of their mailing address, and of any changes of ownership or mailing address. The initial mailing address of the Association shall be 110 Schreiner Road, Park City, MT 59063. The address of the Association may be changed by the Board of Directors upon notice to the owners.

Section 4.

The Association, acting through its Board of Directors, shall have the power and authority to take such actions as shall be necessary or reasonable to care for, protect and maintain the sewer easements, boundary fences, drainage easements and road easement; to pay a prorated share of the off-site fire fill facility; to enforce the Covenants; to collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve.

The Association shall hold an annual meeting each year at such date, place and time as shall be set by the Board of Directors. At the annual meeting, the members shall review and approve a budget for the next year, shall elect Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association. The members shall have the authority to set the number of Directors, which number shall not be less than three nor more than seven.

Section 5.

The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the members. At the annual meeting, the Directors shall elect a President, Vice-President and Secretary-Treasurer for the Association from among the Directors, except that the Secretary-Treasurer may be a member who is not a Director. Other meetings of the Board of Directors for the purpose of conducting business may be called from time to time.

Section 6.

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

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

Section 7.

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

The Directors may at the DECLARANT'S discretion, be appointed by the DECLARANT until such time as 80% of all tracts within the Association are initially sold by the DECLARANT.

Section 8.

The Board of Directors shall have the power and responsibility of acting on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association and enforce these Covenants. The Directors shall act by majority vote.

Section 9.

The Board of Directors shall also serve as the Architectural Committee.

Section 10.

The Board of Directors shall serve as officers which shall be designated by a simple majority of the members at the annual meeting unless and until a majority of the members vote to have officers elected separate and apart from the directors.

Section 11. The duties of each office shall be as follows:

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

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

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

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

Section 12. A vacancy in any office of the Association shall be

filled by appointment by the Board of Directors until the next annual meeting or the successor is duly appointed or elected.

Section 13. Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, a special meeting shall be held upon call of 25% of the owners. Special meetings shall require 10 days' notice, in writing. Notice of annual and special meetings shall be mailed to owners at the address for each owner which is listed as such on the official plats and records at the office of the Clerk and Recorder, Stillwater County, Montana, or at such address as shall be designated, in writing, by any owner. The presence of members, in person or by written proxy, representing 60% of the total votes of the membership shall constitute a quorum.

Section 14. If proposed action is favored by a majority of the votes cast at a meeting, but such vote is less than the requisite 60% of the members, members who were not present in person or by proxy may give their assent to any action in writing, provided the same is received by the Secretary of the Association not later than thirty (30) days from the date of such meeting wherein the action was voted upon.

Section 15. The actions of the Board of Directors, Architectural Committee, and other agents of the Association shall conduct business as closely as possible in the spirit intended as put forth in the Covenants.

Section 16. Any procedural language contained in the Covenants is hereby made a part of these Bylaws.

332080

Middle Valley Sub.

Amended Tr. 5

Articles of Incorporation

332080 SURVEY

Pages: 0

STATE OF MONTANA STILLWATER COUNTY

RECORDED: 07/02/2007 11:41 KOI: SURVEY

Pauline M. Shuler CLERK AND RECORDER

FEE: \$8.00

BY:

Pauline M. Shuler

TO: FILED

**DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS
FOR AMENDED TRACT 5 MIDDLE VALLEY SUBDIVISION
PLAT NUMBER 332080**

Wayne Hertzler,
owner of the property
herein addressed

to the Public

THIS DECLARATION is made this 11th day of June, 2007, by Wayne Hertzler, owning certain real property in Stillwater County, hereinafter referred to as "DECLARANT".

RECITALS:

DECLARANT makes this declaration upon the basis of the following facts and intentions:

A. DECLARANT is the owner of the following described real property located in Stillwater County, Montana:

Lots 1-6; created by the subdivision of original Tract 5, (Middle Valley Subdivision) as contained in Certificate of Survey No. 300203 in Section 33, Township 2 South, Range 23 East, Stillwater County, Montana; and any additional lots created from Tract 5 of COS 300203.

The above-described property to be included in this development, is hereinafter called the "**Amended Tract 5 Middle Valley Subdivision**".

B. DECLARANT plans to develop said property and pose thereon beneficial protective covenants under the general plan of improvement for the benefit of all such property, every part thereof and interest therein.

NOW, THEREFORE, DECLARANT hereby declares that Lots 1-6 of the Amended Tract 5 Middle Valley Subdivision shall be held, sold, conveyed, encumbered, used, occupied and improved subject to the following easements, restrictions, covenants and conditions, all of which are in furtherance of a plan for subdivision, improvement and sale of said real property and are established for the purpose of enhancing the value, desirability and attractiveness of the real property and every part thereof, except as modified for Lot 6 elsewhere in this document. All of the easements, covenants,

restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any thereof, and shall be for the benefit of each owner or any portion thereof and inure to the benefit of and be binding upon each successor in interest of such owners.

Lot 6 may be subdivided in the future or may have a boundary adjustment with property located outside of Amended Tract 5 Middle Valley Subdivision. That portion of Lot 6 which is north of the Kiefer Drain Ditch will not be covered or subject to these covenants if it is separated by a boundary relocation, or if it is subdivided from the original Lot 6.

ARTICLE I

Section 1.1

"ASSOCIATION" shall mean **Sunbird Homeowners Association**; a Montana registered corporation not for profit, its successors and assigns. This corporation is registered with the Montana Secretary of State under Filing Number D-167396-766273.

Section 1.2

"Common Area" shall mean all real property in which the ASSOCIATION owns an interest for the common use and enjoyment of all of the members. At this time the common area consists of the following property:

a. Easements for roads, sewer piping and drainfield areas, and off-site fire protection areas, more particularly described in the plat and easements, on file in the office of the County Clerk and Recorder, Stillwater County, Montana which may be affected by and/or located on the property covered by these covenants.

Section 1.3

"Tract" shall mean any individually platted lot or tract of real property herein dedicated or subsequently dedicated by the DECLARANT to be covered by these Covenants, or any other property the ASSOCIATION agrees to accept for membership, except common area.

Section 1.4

"Member" shall mean any tract owner. Each member or owner agrees to abide and be bound by the Covenants as applicable to each Tract, the Articles of

Incorporation, Bylaws and the Resolutions of the ASSOCIATION, if any. However, if Lot 6 is subdivided such that the Kiefer Drain Ditch is the dividing line, all property north of the ditch, not using the Sunbird road easement for access shall not be required to be a member of the Association.

Section 1.5

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

Section 1.6

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

Section 1.7

The term "Directors" or "Board" shall mean the Board of Directors of the ASSOCIATION, and shall consist of tract owners.

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

Until eighty percent (80%) of the total number of tracts receiving preliminary plat approval have been sold, the DECLARANT shall have the right to appoint the Board of Directors, who shall not be required to be tract owners or members of the ASSOCIATION.

Section 1.8

The term "DECLARANT" shall mean and refer to Wayne Hertzler, and his successors and assigns.

ARTICLE II

PROPERTY RIGHTS

Section 2.1. OWNERS' EASEMENT OF ENJOYMENT.

Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Tract, subject to the following provisions:

- (a) The right of the ASSOCIATION to provide reasonable restrictions on the use of the Common Area for the overall benefit of its members;
- (b) The right of the ASSOCIATION to suspend the voting rights of any member and rights of a member, his household and guests to use of the Common Area for the entire length of any period during which such member shall be in default in payment of any assessment duly levied against his Tract. Such rights also may be suspended for any infraction of the ASSOCIATION's published rules and regulations;
- (c) Common area shall remain perpetually in the ownership of the ASSOCIATION, with the exception of the right of the ASSOCIATION to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless approved by two-thirds (2/3) of the Members and subsequently approved by the Stillwater County Board of Commissioners, agreeing to such dedication or transfer, and an instrument evincing such dedication or transfer has been recorded.

Section 2.2. DELEGATION OF USE.

Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area, to his tenants, or contract purchasers who reside on the property.

Section 2.3. DECLARANTS' RETAINED RIGHTS

The DECLARANT reserves the right to maintain and improve the common areas including the road to the end of realizing the complete development of the above mentioned tracts.

The DECLARANT reserves the right to use the road easement for the interior road right-of-way for:

- for agricultural purposes;
- for his personal vehicular and pedestrian traffic;
- to place or remove gravel as desired;
- to plant and maintain trees and shrubs;
- to place and maintain an irrigation system for the trees
- and to otherwise forward the plan of development for entire area as noted above.

Section 2.4. BYLAWS

The DECLARANT hereby affirms that the BYLAWS of the ASSOCIATION have been prepared and adopted by the Board of Directors prior to the sale of any piece of property covered by these covenants. Copies of the BYLAWS may be obtained from the secretary of the ASSOCIATION.

ARTICLE III

ASSOCIATION MEMBERSHIP, VOTING RIGHTS AND ASSESSMENTS

Section 3.1

Every Owner of a Tract which is subject to assessment shall be a Member of the ASSOCIATION. Membership shall be conditional upon and may not be separated from ownership of a Tract which is subject to assessment. Exceptions are contained in the By-Laws.

Section 3.2 MEMBERSHIP CLASSES

The ASSOCIATION shall have one class of voting membership defined as follows:

Members shall be all Owners of Tracts. Members shall be entitled to one (1) vote for each Tract owned. When more than one person holds an interest in any Tract, all such persons shall be Members. The vote for each such Tract shall be exercised as they among themselves determine, but in no event shall more than

one vote be cast with respect to any single Tract.

ARTICLE IV

ASSESSMENTS

Section 4.1. CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.

The DECLARANT, for each Tract owned within the **Properties**, hereby covenants, and each Owner of any Tract by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the ASSOCIATION (a) annual assessments or charges, and (b) special assessments for capital improvements, such assessments to be fixed and collected as hereinafter provided.

The annual and special assessments, and in the event of any default in the payment thereof, together with interest, costs, and attorney's fees, shall be charges on the Tract and shall be a continuing lien upon the Tract against which each such assessment is made. Each such assessment, and in the event of any default in the payment thereof, together with interest, costs, and attorney's fees, shall also be the personal obligation of the person who was the Owner of such Tract at the time when the assessment fell due; however, an Owner's personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed in writing by them.

Section 4.2. PURPOSE OF ASSESSMENTS.

The assessments levied by the ASSOCIATION shall be used exclusively to promote the recreation, health, safety, convenience, and welfare of the Owners, and for the establishment, improvement and maintenance of facilities enhancing the use and enjoyment of the Common Area including, but not limited to, the payment of any taxes and insurance on the Common Area, maintenance of easements owned by the ASSOCIATION, and the cost of labor, equipment, materials, management and supervision related thereto.

Section 4.3. AMOUNT OF ANNUAL ASSESSMENT.

The minimum base assessment shall be \$100.00 for each improved lot and \$50.00 for each unimproved lot; except that the assessment for lots owned by the developer shall be zero until such time as they are sold. The maximum annual assessment per Tract which may be made by the ASSOCIATION in every calendar year shall not substantially exceed the projected and budgeted actual and reasonable costs

to be incurred by the ASSOCIATION during the coming year in carrying out the purposes herein set forth, and may include a reasonable reserve for contingencies; except that lots owned by the developer shall be assessed zero until such time as they are sold. The amount of the annual assessments shall be fixed by the Board of Directors of the ASSOCIATION in the following manner:

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

Section 4.4 - SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.

(a) General Special Assessments.

In addition to the annual assessments authorized above, the ASSOCIATION may levy, in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair and/or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the voting Members, voting either in person or by proxy at a meeting duly called for this purpose. Special assessments may be levied to be paid over one or more years. Assessments for normal maintenance and repairs shall not require two-thirds (2/3) vote.

Section 4.5 - NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 4.3 AND 4.4

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 of this Article shall be sent to all Members not fewer than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.6 - UNIFORM RATE OF ASSESSMENT.

Both annual and special assessments shall be fixed at a uniform rate for all Tracts, except the Directors may fix a different uniform rate for improved and unimproved

Tracts. The assessments may be collected on a monthly, quarterly or annual basis. Special assessments shall be fixed at the same rate for each Tract affected by the special assessments.

Section 4.7 - DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES.

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

The ASSOCIATION, upon demand and for a reasonable charge, shall furnish a certificate signed by an officer of the ASSOCIATION setting forth whether the assessments on a specified Tract have been paid.

Section 4.8 - EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION.

Any assessment not paid within sixty days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The ASSOCIATION may bring an action at law against the Owners obligated to pay the same or foreclosure the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or by abandonment of their Tract.

Upon delivery of the notice of assessment to the owner, the assessment shall be a lien upon the owner's tract until paid. The ASSOCIATION may record a notice of the lien with the Clerk and Recorder of Stillwater County, Montana. In the event of non-payment within thirty days after the recording of the notice of lien, the ASSOCIATION may foreclose the lien in the manner set forth under the Montana law for the foreclosure of liens against real property.

A member shall not be entitled to vote at any time during which he is delinquent in the payment of his assessment(s).

Section 4.9 - SALE OR TRANSFER OF A TRACT.

The lien of the assessments provided for herein shall be subordinated to the lien of any first mortgage. Sale or transfer of any Tract shall not affect the assessment lien; however, the sale or transfer of any Tract, pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such

Tract and/or Tract Owner from liability for any assessments thereafter becoming due or from the lien thereof.

A person or entity purchasing a tract shall be responsible for checking with the ASSOCIATION for any outstanding assessments against said Tract before the closing upon the purchase.

ARTICLE V

ARCHITECTURAL CONTROL

Section 5.1 - SUBMISSION OF PLANS BEFORE CONSTRUCTION

No construction, or alterations affecting the external appearance of any main buildings, secondary buildings, fences, walls, railings, artifacts, and the like, and no wire, pipe, well, and the like shall be made, erected, altered, placed or permitted to remain upon the properties until plans and specifications showing its design, location, construction materials and color shall have been submitted and approved, in writing, by a majority of the Board of Directors, or the Architectural Committee if one has been established, as compliance with these Covenants. Normal maintenance operations are exempted.

The Board of Directors shall have the authority to reject materials, designs submitted with plans, or the plans themselves, if they are not compatible with, or are inappropriate for the rest of the subdivision as based on the stated goals and restrictions of these Covenants.

In considering any such plans and specifications, the Board shall regard compatibility with these covenants and specifications noted on the Plat as the primary and foremost design objectives.

Section 5.2 - APPROVAL OR FAILURE TO DISAPPROVE.

Sufficiently detailed plans and designs submitted must be approved by a majority of the Board of Directors, and the Owner notified in writing within twenty-one days after submittal of detailed plans and specifications. If the Board, fails to approve the plans by a majority vote, the Owner shall be informed, in writing, as to the areas of non-compliance, and shall resubmit plans showing compliance for approval by the Board of Directors.

In the event the Board fails to vote to approve or disapprove the plans submitted to it within fifteen days after the detailed plans and specifications have been submitted, provided the plans include the information set forth above, approval shall not be required, and this Article will be deemed to have been fully complied with.

Approval of any such plans and specifications, either made expressly in writing or by the expiration of the twenty-one day period herein above provided, shall then permit the Owner to commence construction in accordance with said plans and specifications, but any deviation from said plans and specifications which, in the judgment of the Board is a substantial detriment to the appearance of the structure or of the surrounding area, shall be corrected by the Owner to conform with the plans and specifications as submitted.

Section 5.3 - AFTER APPROVAL, TWELVE MONTHS TO BE COMPLETED.

Any structure to be erected in accordance with approval so given must be erected and exterior completed within twelve (12) months of approval or a new approval obtained. If any structure is begun and is not completed within twelve (12) months of the commencement of construction, and in the judgment of the Board is of offensive or unsightly appearance, the Board, may take such action as may be necessary in its judgment to improve the appearance so as to make the property harmonious with other properties. Such action may include, by way of example only, completion of the exterior of the structure, screening or covering of the structure, or any combination thereof, or any similar acts, and the amount of any expenditures made in so acting shall be a lien on the property and may be enforceable by an action at law or in equity.

Section 5.4 - ARCHITECTURAL GUIDELINES.

The Board may make such reasonable rules and bylaws and adopt such procedures as it deems necessary to carry out its functions, which rules, Bylaws and procedures may not be inconsistent with the provisions of these Covenants. A copy of all rules, Bylaws and procedures shall be available to the owners, and may be obtained from the Secretary of the Board of Directors.

(a) Without limiting the authority of the Board with respect to other matters, the said committee may designate set back distances for any structures as in its discretion best suits the requirements of the lot involved and it shall have the authority to reject materials, designs, and colors submitted with plans as well as the plans themselves, if in the Board's discretion they are not compatible with the rest of the subdivision.

(b) All applications to the Board shall be in writing and shall conform to the rules and regulations of the said Board.

(c) In considering plans and specifications, the Board shall examine the suitability of the same to the site, including the material of which it is to be constructed and the relationship of the same to the neighborhood and adjacent properties.

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

(e) The Board and the individual members thereof may not be held liable by any person for any damages for any action taken by the said Board pursuant to this declaration of covenants, conditions and restrictions, including damages which may result from correction, amendment, changes or rejection of plans, the issuance of building permits or any delays associated with such actions on the part of the Board.

Section 5.5 - LIABILITY

Neither the ASSOCIATION, the DECLARANT, the Board of Directors, nor the individual members thereof, may be held liable to any person for any damages for any Board of Directors action taken pursuant to these Covenants, including but not limited to, damages which may result from correction, amendment, changes or rejection of plans and specifications, the issuance of approvals, or any delays associated with such action on the part of the Board of Directors.

ARTICLE VI

MINIMUM BUILDING AND USE RESTRICTIONS

Section 6.1. BUILDING RESTRICTIONS.

Any structure which fails to meet the following minimum standards shall not be erected, placed or allowed to remain on any Tract, and the Review Committee shall have no power to approve any structure failing to meet at least the following minimum standards;

1. No structure, other than a dwelling and structures associated with such dwelling providing for the exclusive residential use of a family, shall be erected, altered, placed, or permitted to remain on Lots 1,2, 3 or 4.
2. Every main dwelling shall have a minimum size of 1200 (one thousand two hundred square feet), which square footage shall be interior living space, exclusive of any basement or garage, but shall not include any such space above the main floor.
3. Any building or residence erected after filing of these covenants, on any Tract shall be of new construction, and no old building or buildings shall be moved onto any Tract. Buildings existing at the time of creation of this

subdivision shall be exempted.

4. No construction equipment or materials of any nature can be moved onto Lots 1,2,3 or 4 more than 60 days prior to start of any construction. Lots 5 and 6 are exempt except that any storage of materials for a period longer than 30 days shall be screened from view to the east and north.
5. Permitted housing construction shall include conventional on-site construction methods using wood, concrete, steel and stone. No manufactured housing, mobile homes, trailers or recreational vehicles are allowed on any Tract either for permanent or temporary living. No temporary or permanent storage of mobile homes is allowed on any Tract.
6. All housing must be placed on concrete foundations.
7. House designs shall be required at a minimum to have three full size gables or be Ell shaped with at least one drop in elevation along the roof line.
8. House designs for Lots 1,2 and 3 shall be required to have at a minimum an attached two car garage.
9. All residential buildings shall have exterior siding consisting of wood, wood look-alikes or wood products, brick, stone, stucco or other manufactured exterior good quality materials, including metal siding, commonly now or hereafter used in the State of Montana on single family residences. However, no sheet or panel metal siding, nor cement block siding is allowed on residential buildings.
10. Roofs shall be covered with wood shakes or shingles, asphalt or fiberglass shingles or raised seam colored metal. Rain gutters are allowed, provided the same are colored to match the trim or color of the roof. The roofs shall have a minimum pitch of 4/12. Further, all structures shall be constructed so that the roof overhang and gable ends extend a minimum of 6 inches horizontally from the walls of the structure.
11. Fences or walls may be constructed, but the location, design, material, color, height and size of the enclosure must be approved by the Board.
12. No signs, billboards, posters or other advertising devices of any kind or character shall be erected or displayed upon any of the Tracts except signs identifying the overall development and signs of a type and size displayed to identify the occupants of a dwelling, which signs shall be approved by the Board.

13. All secondary structures on a site shall match the external design of the primary structure and be similar in appearance to the external material of the primary structure for Lots 1,2 and 3.
14. All concrete that extends twelve (12) inches or more above ground, if painted, shall be painted an earthtone color to blend with its natural surroundings.
15. Any dwelling and any garage, carport or accessory structure attached or unattached to said dwelling erected on any Tract shall be so located so that, at ground level no portion thereof is less than twenty-five (25) feet from any boundary line of the Tract. Waivers to this requirement may be granted on an individual basis, based on agreement by both the Board and adjacent lot owners.
16. No dwelling or other structure intended for use of occupancy by individuals shall be constructed without an adequate septic tank or sewage disposal system, and no outhouse or privy or any similar structure shall be permitted or maintained on any Tract. Any septic tank or sewage or waste disposal system and any private water supply system, including wells, shall be located, installed and maintained by the Tract Owner at all times in compliance with applicable laws, regulations, standards and the like established by the State of Montana and/or any other governmental entity or agency with jurisdiction.
17. Installations for water lines, sewer lines, and all utility lines, including electric power and telephone lines, shall be underground and made at the expense of the Tract Owner, unless otherwise agreed to by the appropriate utility.

Section 6.2. NOTIFICATION OF PROPERTY CONDITIONS.

DECLARANT makes no representation whatsoever as to the geological condition of the Property. Tract Owners are advised that a high water table is present and any below grade construction, may not be prudent. Tract Owners are advised that soil conditions may be such as to limit or preclude construction. DECLARANT assumes no responsibility whatsoever and hereby expressly disavows any liability for any construction, including any below-grade construction. It is and shall be the sole and exclusive responsibility of each Owner to assess the condition of the Tracts he or she owns and its(their) suitability or lack thereof for any construction.

Section 6.3. USE RESTRICTIONS.

The following use restrictions shall be applicable to all Tracts:

1. Lots 1, 2, 3, 4 and 5 may not be subdivided, except with expressed written permission from the original DECLARANT, his heir or assigns. Such permission will be given only if:
 - The proposed subdivision is in character with the existing tracts and subdivided tracts;
 - The proposed subdivision will complement the overall developed property;
 - And will not materially subtract from the value of existing lots and dwellings.

Such proposed subdivision will then be allowed with the expressed written permission of the DECLARANT or his heirs or assigns and observance of proper state and county subdivision law.

Subdivision of Lot 6 is allowed except that only one Tract of the subdivision has a right to use of the common septic drainfield area, without expressed approval by the Declarant. Additionally created tracts must use alternative sewage disposal solutions.

2. No tract shall be have more than one single family dwelling. Lots 5 and 6 may be used for both residential and/or commercial uses which include storage of materials, machinery, tools. No commercial use which would create excessive noise, obnoxious odors or obnoxious lighting is allowed.
3. Lots 1, 2, 3 or 4, or any building or improvement erected thereon shall not at any time be used for the purpose of any trade, profession, manufacturing or business of any description, whether for profit or not, except that such use, if incidental only, shall not be prohibited.

The use of Lots 1, 2, 3, or 4 for a home occupation or hobby-business may be permitted. The home occupation or hobby-business shall be clearly incidental and secondary to the primary use of the tract for residential purposes and shall be limited in location to the inside of a dwelling or outbuilding. No occupation which requires frequent visits by non-Association members is allowed.

Lots 5 and 6 may be used for commercial business purposes except that traffic other than access by machinery commonly used for construction, or travel by construction employees is prohibited from use of Sunbird Road access easement. No business which requires frequent access by the public via Sunbird Road is allowed. Frequent access shall be defined

as more than two visits per day. No business shall have more than five (5) on site employees.

4. No noxious or offensive activities shall be carried on or be permitted to be carried on by an Owner, his invitees or licensees or anyone acting under his direction or under his control, and nothing which may become an annoyance or nuisance to the neighborhood shall be done or suffered to be done on any Tract.
5. No structure on any Tract may be used for dwelling purposes until after its area, as defined by the foundation, has been completely enclosed according to plan and it has been substantially completed and sanitary facilities and utilities permanently installed. No tent, shack or any outbuilding erected on a Tract shall be used as a residence, at any time, whether temporarily or permanently.
6. TV, radio, and other antennae shall be located so as to be inconspicuous. In no event, however, shall any conspicuous antenna, such as, by way of example only, a ham radio antenna, be erected on any Tract.
7. Neither hunting nor the discharge of any rifle, shotgun, pistol or other firearms shall be permitted at any time on any Tract.
8. No animals shall be kept on any Tract, except as herein specified.

As appropriate, each Tract must be fenced and animals restrained. No animal will be allowed off its Owner's Tract unless it is in the immediate company of its Owner or his agents. In no event shall wild or non-domestic animals be kept on any Tract.

HOUSEHOLD PETS

Ordinary domestic household pets are allowed.

All domestic pets must be kept under control and dogs and cats shall not be permitted to roam at large. No commercial dog or cat kennels shall be permitted. Only a reasonable number of domestic pets shall be maintained within any household. The Board may set the number identified as "reasonable".

HORSES

Horses will be conditionally allowed to be permanently kept on a tract by privilege on Tracts of four (4) or more contiguous acres. This privilege is revocable by the Directors for failure to adhere to these provisions.

Only mares, foals and geldings are allowed.

Horses may be permanently boarded provided that the Tract is kept reasonably clean and adequate ground cover consisting of grass and or alfalfa is maintained. Owner(s) must construct approved facilities prior to permanently boarding horses. Minimum facilities shall include:

- A. Fencing of grazing area;
- B. Construction of corral area

Corral construction must be approved by Review Committee. Enclosed area may not exceed 10,000 square feet and location must maintain a 50 foot setback from adjacent lots. No corral may be located in the area between the house and any of the private roads under control of the Association.

- C. Construction of stable facility.

Stables must comply with construction appearance standards set forth elsewhere in these covenants.

GRAZING

The Board of Directors may, at its discretion, allow the temporary grazing of any Tract for the purpose of vegetation control at the request of the Tract owner. In this use only horses may be grazed. This use does not permit the boarding of animals on a permanent basis.

Horses may be grazed on any tract only to the extent that adequate graze is available. The Review Committee or the Association's Directors may limit the number of animals on any Tract, and may withdraw permission for the grazing of horses from any Owner who violates the restrictions of this section.

The tract owner agrees to remove any grazing animals from ground which does not have ground cover, which is defined as grass and/or alfalfa at least 3 inches tall on average.

If the tract owner fails to remove animals from graze which the Directors deem insufficient to protect the ground cover under continuous grazing, the owner will be notified in writing. If the owner continues to allow access by grazing animals the Directors have the right to withdraw that tract owner's privilege to keep the animals or similar animals on the tract. The Association may bring an action at law against the Owners to enforce compliance. The prevailing party shall be entitled to costs and attorneys' fees. Sale of the property automatically reinstates the privilege.

9. The DECLARANT reserves the right to livestock grazing on parcels owned by the DECLARANT.
10. All utilities, power lines, telephone lines, gas lines, and any other utility lines shall be placed underground. No overhead power or telephone poles may be used other than in the county road right-of-way. Interior tracts shall use right-of-way area adjacent to interior road for underground utilities, unless otherwise impractical.
11. No trash, debris, organic or inorganic wastes of any sort shall be permitted to accumulate on any Tract or in any road adjacent thereto, but shall be promptly and efficiently disposed of, and no Tract, vacant or other, shall be used as a dump ground or burial pit. Outside incinerators shall not be permitted.
12. Nothing shall be done which shall interfere with the continued use of easements in existence for irrigation, drainage, sanitary systems and roads, and the installation and maintenance of the utilities within them.
13. No noxious weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon tracts. Each property Owner is responsible for controlling noxious weeds on his property in accordance with the Stillwater County Weed Act, (MCA 7-22-2101-2150 and Stillwater County Weed Control Policies).
14. Lots 5 and 6, in said subdivision may be utilized for the purpose of raising hay in addition to the residential uses.
15. No trailer, mobile home, basement, tent shack, garage, or other outbuilding erected on said tracts shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence, and the exterior of the dwelling shall be finished in its entirety before it can be occupied. Casual use of recreational vehicles or travel trailers for periods not to exceed 30 days may be permitted as prescribed by the ASSOCIATION.
16. No Tract shall be used for the storage of any non-operating vehicles or portions thereof, machinery or equipment, or other personal property of any quantity in excess of the immediate needs and personal use of the Owner of a tract or the occupants thereof. Furthermore, no such use shall be allowed to constitute a menace or nuisance to adjacent property, or become unsightly.

All equipment and vehicles kept on the property, including recreational vehicles, campers, trailers, motor homes, boats and all other recreational equipment, shall be enclosed in the garage or otherwise screened areas. All screening designs must be approved by the Board of Directors. No one shall reside in such recreational vehicles, motor homes, campers, trailers or other recreational equipment stored on the property except as prescribed by the ASSOCIATION.

ARTICLE VII

FIRE CONTROL PROVISIONS

Section 7.1. SPARK ARRESTERS

All stovepipe and masonry chimneys shall have spark arresters installed to reduce the possibility of grass and structural fires.

Section 7.2. FIRE FILL FACILITY

The facility shall be kept full of water at all times. The fire fill facility is located off-site and shall be maintained by shared responsibility between facility users. The Meadows Homeowners Association shall take primary responsibility for the facility and shall be responsible for assigning pro rata cost sharing of maintenance, operation and replacement of the facility. The identified users sharing use and responsibility for cost of operation are: The Meadows Homeowners Association; MV 2 Homeowners Association; and the Sunbird Homeowners Association. Other homeowners associations may become associate members at the sole discretion of Diamond Ranch LC, developer of the Meadows.

ARTICLE VIII

SAFETY AND MAINTENANCE

Section 8.1. ROUTINE SAFETY INSPECTIONS

The Board of Directors shall make annual safety inspections of common areas to identify unsafe conditions. A record of each inspection must be kept along with specific maintenance actions which were authorized to correct the unsafe conditions.

Section 8.2. COMMON AREA MAINTENANCE

The Board of Directors shall identify a maintenance program to be carried out periodically for maintenance of all mutually owned property. At a minimum the Directors shall inspect the roads and if necessary direct work on the roads to maintain acceptable driving conditions. This should include at least annual grading of the surface and addition of road topping gravel as necessary to allow the restoration of a smooth surface by grading. At such time as the roads may be paved, the maintenance program must include patching and chip sealing of the asphalt surface on a regular basis.

Drainage structures shall be annually inspected and kept in good working order.

ARTICLE IX

TERM, ENFORCEMENT, APPLICABILITY AND CHANGE

Section 9.1. TERM OF COVENANTS

The term of the provisions of these Covenants shall be perpetual, subject to deletion, amendment and termination of any or all of the Covenant provisions by the ASSOCIATION in accordance with the provisions of these Covenants and approval by the Stillwater County Commissioners.

Section 9.2. COMPLAINT PROCESS

Filing a Complaint - An owner may file a complaint by submitting a description of the complaint in writing to the Board of Directors at the official mailing address.

Action on a Complaint - The Board of Directors must respond to the complaint in writing within 30 days of receipt. The response must address whether the basis of the complaint is a valid violation of the covenants and what action is proposed.

Section 9.3. ENFORCEMENT

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

In the event of any action to enforce these Covenants, the prevailing party shall be entitled to costs and attorneys' fees. Any tract owner, DECLARANT, or the ASSOCIATION Directors may enforce these Covenants. The ASSOCIATION Directors shall have primary responsibility for enforcement of the Covenants.

Section 9.4. FAILURE TO ENFORCE

Failure by the DECLARANT, the ASSOCIATION or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to so thereafter do.

Section 9.5 INVALIDATION

Invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 9.6 AMENDMENT

DECLARANT's retained rights may not be changed.

This declaration of covenants and restrictions may not be changed for a period of five (5) years without the expressed consent of the DECLARANT. During the first five years this declaration of covenants and restrictions may be changed or amended or additional Covenants added, in whole or in part, by the ASSOCIATION upon approval of two-thirds (2/3) of the votes of the ASSOCIATION at a meeting duly noticed and called for this purpose, and the expressed written consent of the DECLARANT; and provided that the Stillwater County Commissioners consent.

After the initial five year period this declaration of covenants and restrictions may be changed or amended or additional Covenants added, in whole or in part, by the ASSOCIATION upon approval of two-thirds (2/3) of the votes of the ASSOCIATION at a meeting duly noticed and called for this purpose; provided that, the easements for roads, utilities and common areas shall not be changed without the unanimous consent of all of the owners affected by the change; and provided that the Stillwater County Commissioners consent.

Any amendment must be recorded.

Section 9.7. DISSOLUTION

The dissolution of the ASSOCIATION may not occur unless approved by the Stillwater County Commissioners.

IN WITNESS WHEREOF, DECLARANT has hereunto set its hand as of this 11th
day of June, 2007.

Wayne Hertzler
Wayne Hertzler

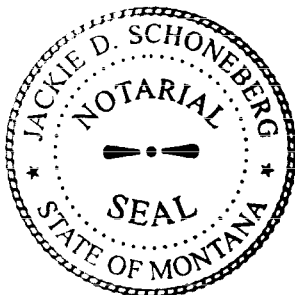
STATE OF MONTANA

: ss.

County of Yellowstone

On this 11th day of June, 2007, before me, a Notary Public for the State of Montana, personally appeared Wayne Hertzler, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal the day and year in this certificate first above written.



Jackie D. Schoneberg
Notary Public for State of Montana
Jackie D. Schoneberg

Printed Name

Residing at Billings, MT

My commission expires 10-24-2010

332080

Middle Valley Sub.
Amended Tr. 5

Declaration of Protective Cov.
& Restrictions.

332080 SURVEY Pages: 0
STATE OF MONTANA STILLWATER COUNTY
RECORDED: 07/02/2007 11:41 KOI: SURVEY
Pauline Mishler CLERK AND RECORDER
FEE: \$8.00 BY: *Pauline Mishler*
TO: FILED

CONVEYANCE OF EASEMENT FOR RIGHT OF WAY

THIS AGREEMENT made and entered into this 15th day of June, 2007, by and between Wayne Hertzler, landholder and resident of Park City, Montana and mailing address: 110 Schreiner Rd., Park City, MT 59063, hereinafter referred to as HERTZLER, and SUNBIRD HOMEOWNERS ASSOCIATION, a Montana registered not-for-profit corporation, with mailing address: 110 Schreiner Rd., Park City, MT 59063, hereinafter referred to as ASSOCIATION.

WITNESSETH:

For the sum of one dollar and other consideration.

HERTZLER does hereby convey and release to the ASSOCIATION, its successors, assigns, lessees, licensees and agents, an easement to be used for access upon, over, and across that certain real property owned by HERTZLER situated in Tract 5 of Middle Valley Subdivision, (Plat # 300203), and more particularly described as follows:

A tract of land designated: "Sunbird Lane", "60' wide public access road easement and utility easement" as shown on Plat No. 332080, Amended Tract 5 Middle Valley Subdivision, as recorded in the Stillwater County Clerk and Recorder Office.

TOGETHER WITH the right of to construct, maintain, repair, improve and utilize ingress and egress over and across said easement, by vehicular and pedestrian traffic at all times, subject to the stated terms.

The ASSOCIATION agrees to hold HERTZLER harmless from all costs, expenses, and liability of claims, arising from the granting of this easement.

This grant of easement from HERTZLER to the ASSOCIATION shall be perpetual and shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors and assigns.

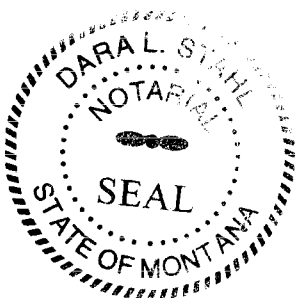
IN WITNESS WHEREOF the parties set their hands and have executed this Agreement the day and year first above written.

Wayne Hertzler June 15 '07
Wayner Hertzler Date

STATE OF MONTANA
County of Stillwater

On this 15 day of June, 2007, before the undersigned, a Notary Public in and for the State of Montana, personally appeared Wayne Hertzler, known to me to be the person who subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year in this certificate first above written above.



Dara L. Stahl
Printed Name DARA L. Stahl
Notary Public for the State of Montana.
Residing at Park City, Montana.
My commission expires 4-23-2010.

332080

Middle Valley Sub.

Amended TNS

Conv. of Easement for
R.O.W.

332080 SURVEY Pages: 0

STATE OF MONTANA STILLWATER COUNTY

RECORDED: 07/02/2007 11:41 KOI: SURVEY

Pauline Mishler CLERK AND RECORDER

FEE: \$8.00

TO: FILED

BY: *Pauline Mishler*

GRANT OF FIRE FILL FACILITY USE EASEMENT
and
USE AGREEMENT

THIS INDENTURE, made and entered into this 15th day of June, 2007, by and between DIAMOND RANCH LC, the owner, hereinafter referred to as the "Grantor", and SUNBIRD HOMEOWNERS ASSOCIATION, hereinafter referred to as the "Grantee."

THE GRANTORS do hereby give, grant and convey unto the Grantee, its successor and assigns, the right, and privilege to joint use of a fire protection fill facility easement, together with necessary fixtures and appurtenances, along the following designated easement, to wit:

A strip of land located in the NW 1/4 of Section 33, T.2S., R.23E., PMM, Stillwater County, Montana, being an easement, fifty (100) feet in width, and one hundred thirty feet in length, lying in a portion of Tract 2 and a portion of Tract 4 Plat No. 300203 and described by the following courses: beginning at the southeast corner of Tract 4, Plat No. 300203, and thence S00°03'30"E a distance of 30.24 feet; thence S82°47'19"W a distance of 131.02 feet; thence N00°03'30"W a distance of 30.24 feet; thence N82°47'19"E a distance of 131.02 feet back to the point of beginning and lying in Tract 2; beginning at the southeast corner of Tract 4, Plat No. 300203, and thence S82°47'19"W a distance of 131.02 feet; thence N00°03'30"W a distance of 25.20 feet; thence N82°47'19"E a distance of 131.02 feet; thence S00°03'30"E a distance of 25.20 feet back to the point of beginning and lying in Tract 4; all as contained and as shown as "Fire Facility Fill Easement", on the attached drawing.

Said easement shall be limited, to a primary use as a emergency fire fill facility; to be operated and maintained by Grantor's agents, and used by Grantee only as necessary to utilize the facility in a fire emergency.

Grantee's right of use is based on a continued monetary contribution of a pro rata share (based on the total number of tracts served by the facility), of maintenance costs as well as any required rebuild costs of the facility, as determined by the Meadows Homeowners Association. The Meadows Homeowners Association shall be responsible for maintenance and repair of the fire fill facility; and shall determine the pro rata share cost for which the Sunbird Homeowners Association is responsible.

By accepting this Grant of Fire Fill Facility Easement, the Sunbird Homeowners Association agrees to the conditions of use, and the requirement to pay a pro rata share of any maintenance, repair or rebuild costs as determined by the Meadows Homeowners Association

said grant of right, and privilege extending over and across the above described land, according to this easement description, and to travel upon and use the said lands hereunto described for the purposes described above.

THIS GRANT of right and authority shall run with the said property and be binding on the Grantors, their heirs, successors, and assigns, all subsequent owners, and any parties having the right, title, or interest in the said property.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand this 15th day of June, 2007.

Willow L. Brown, Manager
Owner: Diamond Ranch LC by Willow L. Brown, Manager

As president of the Board of Directors of the Sunbird Homeowners Association, and acting on its behalf, I agree to accept this easement and use agreement and the responsibility for payment of the pro rata share of maintenance and repair costs..

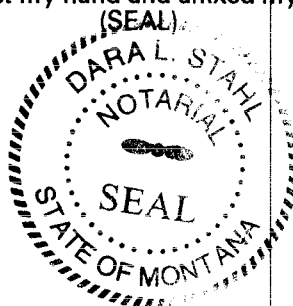
Wayne Hertzler
Board of Directors: Sunbird Homeowners Association by Wayne Hertzler

STATE OF MONTANA)
County of Stillwater)ss

On this 15 day of June, 2007, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Willow L. Brown and Wayne Hertzler, known to me to be the persons who subscribed to the within instrument and acknowledged to me that they executed the same.

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

Dara L. Stahl
Notary Public for the State of Montana
DARA L. Stahl
Printed Name
Residing at Park City
My Commission expires 4-23-2010



332080

28

27

CEMETERY ROAD



33

34

Tract 3, Plat 300203

60'

SCHREINER ROAD

500'03'30"E
249.30'(BASIS OF BEARINGS)
N 00°03'30" W 1319.71'

Tract 4, Plat 300203

DIAMOND RANCH LC
BOX 453
PARK CITY, MT 59063500'03'30"E
285.93'

Tract 2, Plat 300203

DIAMOND RANCH LC
BOX 453
PARK CITY, MT 59063FIRE FACILITY
ACCESSN82°47'19"E
302.35'LOCATION OF FIRE
FILL FACILITYKEEFER
DRAIN
EASEMENTS82°48'09"W
907.03'

Tract 5, Plat 300203

WAYNE HERTZLER
110 SCHREINER RD.
PARK CITY, MT 59063

SECTION LINE

19"W
16'

DRWN
VON

CHKD
KEB

DATE
6/12/07

SCALE
1"=100'

PROJECT
AMENDED TRACT 5
MIDDLE VALLEY SUB.

TITLE
FIRE FILL FACILITY
EASEMENT

FIGURE

BROWN &
ASSOCIATES

BOX 608, PARK CITY, MT 59063
civil sanitary design planning
(406) 633-2500

332080

Middle Valley Sub.

Amended T.R.S

Grant of Fire Fill

Facility Use Easement

332080 SURVEY

Pages: 0

STATE OF MONTANA STILLWATER COUNTY

RECORDED: 07/02/2007 11:41 KOI: SURVEY

Pauline Mishler CLERK AND RECORDER

TEE: \$8.00

BY:

TO: FILED

Pauline M. Mishler

CERTIFICATE OF COMPLETION OF PUBLIC IMPROVEMENTS**CERTIFICATE OF COMPLETION**

I, **Keith E. Brown**, a registered professional engineer licensed to practice in the State of Montana; hereby certify that the following public and private improvements, required as a condition of approval of **AMENDED TRACT 5 MIDDLE VALLEY SUBDIVISION**, have been installed in conformance with the attached engineering specifications and plans:

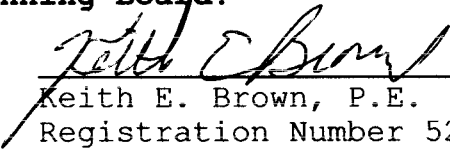
A. Required Access Road Completed

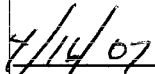
1-600 lineal feet, gravel surface, access road terminating in a 80 foot diameter gravel cul-de-sac; to Stillwater County Standards.

The following specifications have been met:

1. Travel surface width 24 feet.
2. Design section is 4 inches of 0.75" minus crushed gravel and 6" of 3" minus pit run gravel which meets or exceeds the Stillwater County road design standards.
3. Overall slope less than 1%.
4. Stormwater swale on south side.
5. 1 - 12"x40' HDPE culverts.
6. 1 - Combination STOP/Street Sign

B. Installation of a 30,000 gallon fire fill facility as per agreement with Park City Fire District and Stillwater County Planning Board.


Keith E. Brown, P.E.
Registration Number 5254PE
Box 608
Park City, MT 59063


Date

