

Return to: Kadrmas, Lee & Jackson, Inc.
P.O. Box 80303
Billings, MT 59108-0303

PLANNED DEVELOPMENT AGREEMENT

FOR

Western Sky

By and Between:

Mont Vista, LLC
PO Box 333
Reedpoint, Montana 59069

And

The City of Billings, Montana

**PLANNED DEVELOPMENT AGREEMENT
FOR WESTERN SKY SUBDIVISION**

In accordance with the Unified Zoning Code Section 27-1310, the parties to the Planned Development Agreement for Western Sky (“Agreement”)

Lot 3 and 4 of Block 1 of Plat of Western Sky Subdivision, recorded in the office of the clerk and recorder, Yellowstone County, under Document No. 3374355.

The parties to the Agreement consent to this re-zoning, said parties being the CITY OF BILLINGS, a Montana municipality (“the City”), of 210 N 27th Street, Billings, Montana, 59101 and MONT VISTA, LLC, a Montana limited liability corporation, of PO Box 333, Reedpoint, Montana 59069, and Gareld F. Krieg and Barbara B Krieg, 3115 Sycamore Lane, Billings, MT 59102.

IN AGREEMENT WITH THE FOREGOING, the authorized representatives of the foregoing parties have executed this document on the date or dates appearing below. The parties agree that this document may be signed in counterparts using separate signature pages.

This **PLANNED DEVELOPMENT AGREEMENT FOR WESTERN SKY** is made this ____ day of _____, 20__, by Mont Vista, LLC, a Montana limited liability company (“Developer”) of PO Box 333, Billings, MT 59069, and Gareld F. Krieg and Barbara B Krieg, 3115 Sycamore Lane, Billings, MT 59102 and the City of Billings, a Montana municipality, (“City”) of 210 North 27th Street, Billings, MT 59101.

RECITALS

WHEREAS, MONT VISTA, LLC is the owner of a portion of the following described property situated in the NW ¼ of Section 15, Township 1 South, Range 25 East, P.M.M., Yellowstone County, Montana:

Lot 3 and 4 of Block 1 of Plat of Western Sky Subdivision, recorded in the office of the clerk and recorder, Yellowstone County, under Document No. 3374355

WHEREAS, a portion of the above described property is referred to herein as “Western Sky Planned Development”; and

WHEREAS, the Western Sky Planned Development may consist of a mixture of community commercial, neighborhood commercial and residential housing and Mont Vista, LLC desires to place certain Planned Development zoning and land use restrictions on the property; and

WHEREAS, Mont Vista, LLC enters into this Agreement with the City of Billings to ensure that the Western Sky Planned Development will be developed and maintained consistent with the standards described in this Agreement.

NOW, THEREFORE, the undersigned hereby establish and declare the following development plan shall apply to all of the real estate described hereinabove, shall bind the present and future property owners to such real property and shall run with the land.

AGREEMENT

ARTICLE I - PURPOSES

Section 1. Greater or Lesser Standards. Many of the requirements described in this Agreement are the same, similar to, or stricter than requirements in the Unified Zoning Regulations. However, to the extent that this Agreement creates greater or lesser standards for density, use, height, lot coverage, parking, signage, traffic circulation, landscaping or other land use conditions, the City has determined in accordance with Section 27-1303 of the Unified Zoning Regulations, these unique standards are appropriately balanced by the inclusion of mitigating features or special amenities not otherwise provided by law or regulation. Some of these amenities that shall be incorporated into the Western Sky Planned Development include:

- A. Open Space and Park Land above the minimum of eleven percent (11%) dedicated to the residential portion which is required by the Subdivision Regulations.
- B. Construction and landscaping of a functional and attractive pedestrian and bicycle facility that will promote the safe and convenient transportation of children and adults while

interfacing with the Private Park Areas located throughout the Western Sky Planned Development.

Section 2. Natural Environment. A natural and healthy environment will be emphasized with ample Park Land and Open Space. Sidewalks, bicycle and walking trails will interconnect with Park Land and Open Space to encourage physical activity.

Section 3. Mixed Residential Use Purpose. The Western Sky Planned Development will effectively define a variety of commercial and residential uses allowing for a planned mix of community and neighborhood commercial and housing types creating a diverse and aesthetically pleasing community.

Section 4. Flexibility for Future Development. The Western Sky Planned Development shall permit maximum flexibility of design and materials to meet commercial and residential demands as they change over time. The planned development zoning described in this Agreement is intended to provide an opportunity for future development that will create an attractive and functional neighborhood community with a variety of living and commercial opportunities.

ARTICLE II – DEFINITIONS

Section 1. The Billings Unified Regulations means, “The Billings Unified Regulation” in effect, June 5, 2017.

Section 2. Unified Zoning Regulation Definitions. All terms used herein shall have the same definition and meaning as specified in the City of Billings Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein. If a definition is not provided, the term shall be deemed to have a common and ordinary meaning.

Section 3. Western Sky Planned Development. “Western Sky Planned Development” or “Planned Development” or “development” consists of a portion of the land situated in the NW 1/4 of Section 15, Township 1 South, Range 25 East, P.M.M., Yellowstone County, Montana described as Lot 3 and 4 of Block 1 of Plat of Western Sky Subdivision, recorded in the office of the clerk and recorder, Yellowstone County, under Document No. 3374355 is planned to be in the Western Sky Subdivision plat including commercial and residential lots and space, streets, Open Space and Park Land within in the Western Sky Planned Development. Attached hereto and by reference incorporated herein is the attached **Planned Development Exhibit** illustrating the land and streets included in the Planned Development. The development will feature community, neighborhood commercial and mixed residential uses.

Section 4. Western Sky Homeowners Association. The term “Association” or “Western Sky Homeowners Association” shall mean the association of owners of property within the Western Sky Planned Development that may be organized by Mont Vista, LLC.

Section 5. Design Review Committee. “Design Review Committee” means the person, entity or committee appointed by Mont Vista, LLC to exercise the rights, duties and responsibilities assigned to it by Mont Vista, LLC under this Planned Development Agreement or under any Declaration of Covenants and Restrictions recorded by Mont Vista, LLC.

Section 6. Developer. “Developer” means Mont Vista, LLC or any person or entity to whom Mont Vista, LLC transfers or assigns its development rights hereunder.

Section 7. Neighborhood Commercial. “Neighborhood Commercial” means commercial centers and limited retail activities conducted in a unified development designed to serve the surrounding neighborhood with facilities consisting of convenience retail, personal service establishments and mini-storage units as permitted uses.

Section 8. Community Commercial. “Community Commercial” means to provide locations for planned and integrated retail, service and office facilities in close proximity to high and medium density residential neighborhoods.

Section 9. Residential Multi-Family. “Residential Multi-Family” means to provide adequate sites for multi-family developments including high-rise apartment complexes. Dwelling unit density is increased in this classification to encourage development in areas where it will complement existing developments. Land within the classification be located with access to major arterial transportation routes plus financial, cultural and retail stores and be served by public water and sewer services.

Section 10. Dwelling Unit. “Dwelling Unit” means one (1) or more rooms designed for or occupied by one (1) family for living or sleeping purposes and may contain kitchen and/or bathroom facilities for use solely by one (1) family. All rooms comprising a dwelling unit shall have access through an interior door to other parts of the dwelling unit. A residence building may contain one (1) or more dwelling units.

Section 11. Grade. “Grade” is the lowest point of elevation of the finished surface of the ground, or the lowest point of elevation of the finished surface of the ground between the exterior wall of the building and the property line, if it is less than five (5) feet distance from the wall. In cases where walls are parallel to and within five (5) feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley, or public way.

Section 12. Height. “Height” or “Building Height” means the vertical distance from the highest point of a structure to the “grade”.

Section 13. Lot. “Lot” or “lot” means a portion of the Mont Vista Planned Development depicted as a separately identified parcel on a recorded subdivision plat that may be independently owned and conveyed. The term refers to the land, as opposed to any structures or other improvements on the Lot. Multiple Dwelling Units may be located on one Lot. The term does not include Park Land and Open Space or property dedicated to the public.

Section 14. Park Land and Open Space. “Park Land” and “Open Space” means any property or facility that Mont Vista, LLC has identified on the Mont Vista Subdivision plat as Open Space and/or Park Land. In addition, Park Land may include but is not limited to park areas, open spaces, common areas, water amenities, bike trails, sidewalks, walking paths, exercise or play areas, sitting areas, picnic areas, landscaped entryways, community sign areas.

Section 15. Owner. “Owner” or “owner” shall mean any person or entity owning a fee simple interest in a lot or a purchaser by a contract, whether one or more persons or entities, owning or purchasing a lot, but excluding Developer and/or those having a mortgage or an interest merely as security for the performance of an obligation.

Section 16. Single Family. “Single Family” or “single family residential” means a building constructed and designed for occupancy by one (1) family and containing one (1) dwelling unit.

Section 17. Story. “Story” means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused under-floor space is more than six (6) feet above grade as defined herein for more than fifty percent (50%) of the total perimeter or is more than twelve (12) feet above grade as defined herein at any point, such basement, cellar or underused under-floor space shall be considered a story.

Section 18. Town Home. “Town Home” or “town home residential” or “townhouse” means a building or structure that has two (2) or more one (1) family dwelling units erected as a single building, each being separated from the adjoining unit or units by an approved fire wall or walls and providing for fee simple ownership of land and dwelling unit. In contrast to a “condominium” a town home includes deeded ownership of the land underneath the dwelling unit in the town home, whereas a condominium may not.

Section 19. Twin Home. “Twin Home” or “twin home” or “twin home residential” means a building constructed and designed for occupancy by two (2) families living independently of each other, and containing two (2) dwelling units, where the dwelling units share a common separation such as a hallway, covered lane, ceiling, wall, including without limitation, the wall of an attached garage or porch.

Section 20. Residential Manufactured Home Park or Court. “Residential Manufactured Home” means a space designed or used that contains temporary or permanent parking for two (2) or more manufactured homes spaces which are available to the general public for use as residences. The land or parcel is not composed of individually platted lots which contain only one manufactured home per lot.

Section 21. Unit Ownership Act. “Unit Ownership Act” means the Unit Ownership Act of the State of Montana, Section 70-23-101, et seq., Montana Code Annotated. At the discretion of Developer(s), the Unit Ownership Act may be used to develop Patio Homes, Town Homes, and Twin Homes in the Areas identified herein for such use. However, the terms and limitations in this Planned Development Agreement shall remain applicable.

ARTICLE III – PERSONS BOUND BY THIS AGREEMENT

Section 1. Persons and Entities Bound. The City of Billings and all individuals, corporations or other entities who presently have or shall hereafter acquire any interest in and to any of the real property within the Western Sky Planned Development shall be held to agree to all of the terms of this Agreement, and all such individuals, corporations, and other entities, as well as their heirs, devisees, successors, assigns, tenants, trustees, mortgagees and other persons claiming under them shall be bound by this Agreement, the terms of which shall run with the land unless modified by subsequent zoning amendments approved by the City of Billings.

ARTICLE IV – LAND USES

Section 1. Underlying Land Use Classifications. Lots and underlying land use classifications are illustrated on the attached **Planned Development Exhibit**. The lots are divided into the following Areas with described underlying land use classification.

Underlying Land Use Classification(s)

AREA NO. 1 PD-CC	Community Commercial- no minimum lot size
AREA NO. 2 PD-NC	Neighborhood Commercial- no minimum lot size
AREA NO. 3 PD-RMF	Residential Multi-Family- no minimum lot size
AREA NO. 4 PD-RMH	Residential Manufactured Home - 3300 SF Minimum space area Single Family Home- 4800 SF Minimum lot area Twin Homes- 5300 SF Minimum lot area

Section 2. Permitted Area Uses.

Area No. 1 PD-CC lots may be used for community commercial purposes found in the Unified Zoning Regulations.

Area No. 2 PD-NC lots may be used neighborhood commercial purposes found in the Unified Zoning Regulations including mini-storage units as a permitted use.

Area No. 3 PD-RMF lots may be used for residential multi-family purposes.

Area No. 4 PD-RMH lots or spaces may be used for residential manufactured home, single family home, townhome and/or twin home purposes.

Land not described in lots is to be used for Open Space, Park Land, streets, boulevards, trails, sidewalks, drainage ponds, Hogan's Slough, irrigation ditches and structures, ingress and egress and utility easements and such other uses as may be reserved or required by Developer. Developer, at its discretion, may transfer Open Space land to a Western Sky Homeowners Association company.

Section 3. Special Review Uses. Special Review Procedures for the underlying land use classifications set forth in Article IV hereinabove are allowed and shall comply with the Unified Zoning Regulations as established by the City of Billings.

Section 4. Special Review Criteria to be Considered. In considering a special review or variance request, in addition to the review criteria in the Unified Zoning Regulations, the City shall consider the following criteria:

- A. Mont Vista, LLC must have given its written consent to the special review or variance request.
- B. The proposed use meets architectural guidelines as may be established by Mont Vista, LLC.

Section 5. Commercial Uses Prohibited. All lots or spaces located within Area 3 and Area 4 of the Western Sky Planned Development shall only be used for residential purposes which include lots or spaces used for storm drain ponds and parks with the exception of sales offices or club houses. No lot or space may be used at any time for any business, trade, manufacture or other commercial purpose; however, spaces may be rented or leased and in-home business using telephone, internet and other telecommunications is allowed but such in home business shall be regulated as may be required by City zoning regulations or municipal code.

Section 6. Accessory Dwelling Units. Guesthouses, Apartments over garage are not allowed.

Section 7. Overhead Lines. Overhead utility lines including electrical, telephone, cable lines are prohibited.

Section 8. Lot Size. The spaces or lot sizes are varied and will be set forth in the final plat or equivalent of each phase of the Western Sky Subdivision. In no case will the lot or space size be less than the minimums found in Article 4, Section 1.

Section 9. Minimum Setbacks and Landscaping Requirements

Minimum Community Commercial Setbacks and Landscaping Requirements.

Minimum Building Setback and Landscaping Requirements for lots in all PD-CC area is as follows:

- Building Setbacks - no changes from BMCC
- Street frontage landscaping - no changes from BMCC
- Perimeter Landscaping - no changes from BMCC

Minimum Neighborhood Commercial Setbacks and Landscaping Requirements.

Minimum Building Setback and Landscaping Requirements for lots in PD-NC area is as follows:

- Building setbacks – no changes from BMCC
- Street frontage landscaping – no change to BMCC
- Perimeter Landscaping:
 - For buffer yards, along common boundary lines between RMF developments and NC developments, replace perimeter landscaping requirements in BMCC 27-1105, Section b.2 with the following:
 - Provide 30’ wide buffer yard with trees spaced diagonal at 20’ on center
 - For buffer yards, along common boundary lines between RMH developments and NC developments, replace perimeter landscaping requirements in BMCC 27-1105, Section b.2 with the following:
 - No buffer yard is required where adjacent RMH area is to be developed as park land.

Minimum Residential Multi-Family Setbacks and Landscaping Requirements.

Minimum Building Setback Requirements for lots in PD-RMF area is as follows:

- Building setbacks other than garages and accessory buildings – no change from BMCC
- Setbacks for garages:
 - Replace setback requirements in BMCC 27-310, Table 1 with the following:
 - 15 Feet from internal private street
 - 3 Feet Rear Yard
 - 3’ Side yards including side adjacent to 48th Street West
- Street frontage landscaping:

- Replace street frontage landscaping requirements in BMCC 27-1105, Section b.1 with the following:
 - No buffer yard is required along 48th Street West.
 - In lieu of a buffer yard, 116' of right of way shall be provided measured from the centerline of 48th Street West. Right of way is to accommodate construction of a 10' foot wide shared use path, 40' wide drainage ditch, and landscape buffers.
- Perimeter Landscaping:
 - For buffer yards, along common boundary lines between PD-RMF developments and PD-NC developments, replace perimeter landscaping requirements in BMCC 27-1105, Section b.2 with the following:
 - No buffer yard is required. Where detached garages are not provided on the property line between the PD-RMF and the PD-NC, the developer will install a solid wall at a minimum height of 8 feet.

Minimum RMH Setbacks and Landscaping Requirements.

Minimum Building Setback Requirements for lots in all Areas is as follows:

The premise of setbacks for RHM is there are no implied lots, only spaces for rent or lease. Setbacks are applied to the external boundaries and not the implied internal lines. Separation between a manufactured home and another manufactured home is 15 feet.

- Building Setbacks –
 - Front yard- no changes from BMCC
 - Side Yard Setback- no changes from BMCC
 - Rear Yard Setback- 8 Feet
- Street frontage landscaping - no changes from BMCC
- Perimeter Landscaping - On the eastern property line, the developer will install a minimum 6-foot high screening fence where building structures are located closer than 100 feet from the property line. On the western property line, the developer will install a minimum 6-foot high decorative wall between the 10-foot wide multi-use path and the manufactured home park.

Section 12. Permitted Projections. With Design Review Committee approval, the following projections may be permitted in the PD-RMH area:

- A. Front porches, steps, balconies, stoops, open porches, and covered walkways may encroach 5 feet into the 20 feet front yard setback; Side and Rear porches, steps, balconies, stoops, open porches, and covered walkways may not encroach more than 5 feet on the required 15' separation between manufactured homes and their respective attachments.
- B. Roof overhangs, eaves, gutters, cornices or other architectural features not to exceed two (2) feet.

Section 13. Maximum Density. The City calculates density by determining total dwelling units divided by total gross acres. The City has adopted an Annexation Policy to encourage a minimum density of 6 units per acre.

There are no changes to Area 1 and Area 2 to dwelling density requirements. Maximum average dwelling unit density to Area 3 and Area 4 for 487 dwelling units divided by 46.4 gross acres is an average density of 10.5.

The dwelling units are located in Areas shown on the attached **Planned Development Exhibit** as follows:

Area No. 3 Up to and including 312 Multi-family dwelling units

Area No. 4 Up to and including 175 Single family dwelling units

ARTICLE V – BUILDINGS, SIGNS, FENCES DESIGN STANDARDS

Section 1. General Building Design Standards. Unless expressly designated herein, the building design standards of the Unified Zoning Regulations, the Site Development Ordinance and the Building Code shall be followed for properties in this Planned Development.

Section 2. Design Considerations. Design Considerations shall include five (5) of the following considerations in any application to the Design Review Committee and to the City:

- A. Relationships to open space, pedestrian circulation, landscape features on and adjacent to the site;
- B. Views of the architecture from pedestrian and vehicular perspectives;
- C. Satisfaction of physical, psychological, social and functional needs of users;
- D. Orientation of buildings in relation to streets;
- E. Vehicular versus pedestrian flows.
- F. Character of surrounding developments;
- G. Solar orientation, climate and solar reflection
- H. Potential environmental hazards;
- I. Enhancement of the overall landscape;
- J. Scale of adjacent facilities and open space;
- K. Mountain views.

Section 3. Design Features. Design features shall include three (3) of the following as features of the finished construction:

- A. Landscaped entrance drives;
- B. Decorative walkways;
- C. Dynamic building and roof forms;
- D. Window patterns;
- E. Light and shadow patterns;
- F. Color accent.

Section 4. New Construction Required. Any building or residence erected upon lots in any of Areas 1, 2 and 3 shall be of new construction with concrete footings and foundation walls, mat slabs or other appropriately designed permanent foundation systems.

Section 5. Construction Equipment Time Limit. No construction equipment or materials of any nature shall be moved on to a lot more than sixty (60) days prior to the start of construction to be initiated thereon.

Section 6. Additional and Supplemental Design Guidelines. In addition to the design rules set forth herein, Mont Vista, LLC may record a Declaration of Covenants and Restrictions that provides additions, amendments and supplemental design and restriction guidelines.

Section 7. Signs Comply with Zoning Regulations. All signs shall comply with the Unified Zoning Regulations unless limited herein or as provided in any restrictive covenants recorded by Mont Vista, LLC. Lighted signs are allowed only in Areas 1, 2 and 3.

Section 8. Fences Comply with Zoning Regulations. Fences, walls, berms, hedges and other improvements shall comply with the clear vision standards of the Unified Zoning Regulations. Rear and side yard fences, walls, berms or hedges on a lot and not on a street or Open Space or Parkland shall not exceed eight (8) feet. An earth berm or hill on Open Space or Parkland may exceed eight (8) feet.

VI – LANDSCAPING

Section 1. Parkland Landscaping. Developer, at its expense, shall landscape all private Park Land as subdivision filings are developed. This landscaping obligation occurs after fifty percent (50%) of the lots or spaces in a filing have been sold or leased.

VII – PARK LAND

Park land will be created in excess of that required by the City of Billings Subdivision Regulations, through a combination of private parks, public parks, open space and right-of-way dedications for multi-user paths along the Hogan Slough and Shiloh Drain.

VIII – BICYCLE AND PEDESTRIAN FACILITIES

Section 1. Bicycle and Pedestrian Paths. The development shall provide for pedestrian access along or through lots, and Park Land to create a system of bicycle, pedestrian sidewalks and paths. Prior to turnover to the Park Maintenance District created for the dedicated Park Land, Developer, at its expense, shall provide bicycle and pedestrian trails as approved during the subdivision process. This obligation occurs after fifty percent (50%) of the lots in a filing have been sold, leased or rented.

Trails as distinct from sidewalks will interconnect some streets, Hogan's Slough easement land, and an existing Park Land tree area. Sidewalks shall be a minimum of five feet (5') wide and constructed of concrete or asphalt. Paths may be less than five feet (5') wide and may be natural dirt or covered with rubberized chips, or gravel. Location of sidewalks and paths shall be as determined by Developer in consultation with the City.

IX – SITE DEVELOPMENT STANDARDS

Section 1. Street Types and Standards. In the absence of a contrary agreement, all streets shall be developed to the City of Billings Subdivision Regulations for width, curb, gutter, sidewalk, cross-section, and surface treatment with the exception of Area 4. All streets developed within Area 4 shall be private and conform to the City of Billings Subdivision Regulations for width only. Curb, gutter, sidewalk, cross-section and surface treatment shall be per the PD engineering design.

Section 2. Zone Boundaries. The transitional areas between different commercial and residential use classifications should be designed to complement the adjacent land uses. Use of buffering landscaping is encouraged to achieve a harmonious change between properties and promote the sense of a single, unified neighborhood.

Section 3. Outside Storage. No storage area shall be permitted in the front portion of any lot with the exception of Area 2. Storage areas, shall be screened from the ground-level view of adjacent properties and streets with the exception of Area 2. Screening elements shall be of landscape materials or materials similar to those used to construct the primary structures. Storage areas shall comply with applicable building setbacks as set forth in the PD and must be approved by the Design Review Committee.

Section 4. Parking Area Development Standards. All parking, access drives and loading areas shall be paved and properly graded to ensure adequate drainage. Minimum parking requirements shall meet the City of Billings Subdivision Regulations.

Section 5. Loading and Unloading Areas. Owners may load and unload on their Lot(s) for purposes of their respective uses in accordance City of Billings Subdivision Regulations.

X – INSTALLATION OF IMPROVEMENTS

Section 1. Site Lighting Standards.

- A. All outdoor pole lighting shall be as set forth in the engineering design standards and fully shielded (no light emitted by a fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than twenty (20) feet above grade.
- B. All outdoor lighting, except street lights, shall be located and aimed or shielded to minimize stray light going across property boundaries.
- C. Security lighting-
 - Commercial Corner- structures may be illuminated to address security concerns and measures. Exterior lighting adjacent to residential uses shall be directed away from the residential use and public streets.
 - Mini-Storage- structures may be illuminated to address security concerns and measures. Exterior lighting adjacent to residential uses shall be directed away from the residential use and public streets.

- RMF- buildings may be illuminated to address security concerns and measures. Exterior lighting adjacent to residential uses shall be directed away from other residential uses and public streets.

XI – OTHER REQUIRED DOCUMENTS

Section 1. Other Documents.

- A. Special Improvements Agreement. The City and Developer shall enter into a Special Improvements Agreement that includes provisions for creation of a Western Sky Park Maintenance District for land dedicated to the City for Park Land.
- B. Covenants and Restrictions. Developer may, but is not required to do so, record a declaration of covenants and restrictions that shall supplement this Planned Development Agreement.
- C. Other Documents. Any other documents as may be necessary to implement this agreement shall be executed by the parties hereto.

XII – OTHER REGULATIONS

Section 1. Maintenance. Maintenance by lot and spaces Owners between lot and space lines and the street shall include removal and replacement of dead and dying trees, grass and shrubs, removal of trash and weeds, repair and maintenance of drains, mail boxes whether on or off the Owner's lot or spaces, and repair of light standards, fences, walls, surfacing materials and in general maintain a neat and tidy appearance both on the lot and between the lot and the street.

XIII – ENFORCEMENT

Section 1. Right to Enforce by City. The terms of this Agreement may be enforced by the City as provided in the Unified Zoning Regulations.

Section 2. Right to Enforce by Owners. The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the owners of property within the Western Sky Planned Development and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto, the Design Review Committee, as well as future property Owners. The parties agree the Design Review Committee shall have standing to enforce this Agreement relative to the City or any property owner regardless of whether the Design Review Committee owns a Lot. In addition to all rights under this Agreement, the parties enforcing this Agreement reserve all rights and remedies available at law or in equity, by statute or otherwise including the right to recover damages, reasonable attorney fees and costs. All such rights and remedies shall be cumulative.

Section 3. Right of Abatement and Suit. If Developer, the Design Review Committee or the City of Billings objects (“the objecting party”) to any Owner’s or other party’s breach of this Agreement (“the defaulting party”), the objecting party shall have, in addition to any other rights and remedies arising at law or in equity, the right to abate the effects of the defaulting party’s breach. To exercise the right of abatement the objecting party shall provide the defaulting party with written notice of its objection, specifying the particulars of the objection. If within thirty (30) days of receipt of such notice, the defaulting party fails or refuses to commence to remedy its breach under this Agreement, or if after commencing action the defaulting party fails to cure its default within a sixty (60) day period, the objecting party may perform whatever reasonable maintenance, repair, operation or other curative action as needed to remedy the default. The defaulting party shall pay upon demand to the objecting party the costs of such maintenance, repair, operation or other curative action, together with interest allowed by law from the date of disbursement of such costs until paid in full. The objecting party shall not be responsible for the continued maintenance or repair of any structure or Lot or the performance of the defaulting party’s obligation under this Agreement. The objecting party may also prosecute a proceeding at law or in equity to enjoin a violation of the terms of this Agreement, to cause said violation to be remedied or to recover damages for said violation.

Section 4. Limitation on Enforcement. This Agreement is for the benefit of Developer, City, Owners and the Design Review Committee appointed by Developer and their heirs, devisees, assigns, trustees and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Agreement or to enforce the restrictions contained herein, judicially or otherwise.

XIV– AMENDMENTS AND VARIANCES

Section 1. Amendments or Changes. This Agreement may not be amended, modified or terminated in whole or in part, except with the written consent of Developer and the City. Any modifications requested by Developer, Successors and Assigns, shall be processed using the

same procedures as for a new application in accordance with the Unified Zoning Regulations; however, minor modifications may be approved by the zoning coordinator if he/she finds that the change would not:

- A. Change the overall character of the development;
- B. Change additional allowed uses;
- C. Change the approved minimum setbacks, maximum lots coverage or maximum allowed structure height.
- D. No increase in the number of residential units greater than two (2) percent; and
- E. No reduction in open space greater than two (2) percent.

Section 2. Variance Procedures. Variance procedures shall comply with the Unified Zoning Regulations. However, in no case shall a variance be granted for a use not consistent with this agreement until the requirements of Article 4, Section 4 been complied with.

Section 3. Zone Change Procedures. Zone change procedures shall comply with the Unified Zoning Regulations as established by the City of Billings.

XV– GENERAL PROVISIONS

Section 1. Assignment of Agent. Developer may, in its sole discretion appoint an individual or entity to act as its agent to fulfill the duties and obligations of Developer hereunder. Although not required to be effective, notice of such appointment may be made in writing containing a legal description of the Western Sky Planned Development land, recorded with the real estate records of Yellowstone County, Montana and mailed to the City at the address specified herein for notices.

Section 2. Assignment by Developer. Developer may, in its sole discretion, assign its rights and delegate its duties under this Agreement in whole or in part to any other person or entity. Notice of such assignment shall be made in writing and recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for the Western Sky Planned Development, or any portion thereof, affected by the assignment. Notice of assignment and delegation shall also be provided to the City at the address specified herein. Once any notice of delegation has been recorded in the real estate records of Yellowstone County, Montana, Developer shall have no further responsibility or liability for the future performance or non-performance of this Agreement, and the City and all property Owners shall look exclusively to the appointed person or entity.

Section 3. Coordination with Other Regulations. The City Planned Development (PD) Zoning Regulations are considered to be part of this Agreement and by reference are incorporated herein.

If this Agreement or Covenants do not prescribe rules for a particular aspect of the development or use, either by express terms or by implication, then the terms of any other applicable City zoning regulations or development ordinances, including the Unified Zoning Regulations, shall govern. If other zoning regulations or ordinances applicable to the property are subsequently

amended, the amended regulations or ordinances shall likewise continue to be applicable to the property to the extent that they are not inconsistent with this Agreement or Covenants. If there is any conflict between this Agreement or Covenants recorded by Developer and Planned Development Zoning Regulations, Unified Zoning Regulations, Subdivision Regulations, or other zoning regulations or ordinances, the terms and conditions of Covenants shall govern.

Section 4. Notices. All notices or demands required to be given hereunder shall be in writing and shall be served upon the other party either personally or by registered or certified mail. Service by registered or certified mail shall be conclusively deemed made three (3) days after deposit thereon in the United States Mail, postage prepaid, addressed to the party to whom service is to be given, as hereinafter provided, and the issuance of the registry or certification receipts therefore. All notices or demands to Developer or the City shall be given at the following addresses or such other addresses as Developer or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to Developer: Mont Vista, LLC
PO Box 333
Billings, MT 59069

With copies to: Kadrmas, Lee & Jackson
P.O. Box 80303
Billings, MT 59108-0303

If to the City: City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, MT 59103

With copies to: Planning Division
2825 3rd Avenue North, 4th Floor
Billings, MT 59101

And copies to: City Attorney's Office
P.O. Box 1178
Billings, MT 59108-1178

Section 5. Waiver. Unless expressly so provided in this Agreement, failure of one party to notify the other party of a default in the manner provided in this Agreement shall not be deemed a waiver of any rights that the non-defaulting party may otherwise have at law or in equity as a result of the default.

Section 6. Force Majeure. Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, Acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, terrorist acts, governmental regulations and controls, enemy or hostile governmental action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All parties shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

Section 7. Severability. Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, by a court of competent jurisdiction, shall be considered separate and severable from this Agreement and the remaining provisions shall remain in force and be binding

upon the parties hereto. Venue for matters concerning this PD shall be adjudicated in the 13th Judicial District Court in Yellowstone County, Montana.

Section 8. No Partnership. This Agreement is not intended to create, nor shall it in any way be interpreted to create a joint venture, partnership, or any other similar relationship between the parties.

Section 9. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

Section 10. Recordation. This Agreement and any amendments or modifications shall be recorded in the office of the clerk and recorder of Yellowstone County, Montana.

NOTICE

THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY OF THE WESTERN SKY PLANNED DEVELOPMENT LOCATED IN THE WESTERN SKY SUBDIVISION OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY AND SHALL FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS AGREEMENT BE VIOLATED, THE PARTIES TO THIS AGREEMENT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.

Section 11. Duties Run with the Land. The duties created by this Agreement shall run with the land and shall be binding upon Mont Vista, LLC, the City of Billings, property Owners, and their heirs, successors and assigns.

Section 12. Contact Person. Developer hereby designates a contact person who may be contacted concerning any questions, comments, or concerns. Initially, at the time of recording, the contact person is Tracy Haag, 299 Stephens Hill Rd, PO Box 333, Reedpoint, MT 59069 (Telephone (406) 855-4168). Upon designation of the Design Review Committee, a member of the committee or an entity appointed by Developer shall be the contact person or entity to replace Tracy Haag.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year indicated by the notarial certifications indicated below.

MONT VISTA, LLC

By: _____

Tracy Haag, Member Agent

STATE OF MONTANA)
 : ss.
County of Yellowstone)

This instrument was executed and acknowledged before me on the ____ day of _____, 20__, by Tracy Haag, known to me to be the member agent of Mont Vista, LLC.

(Notary Seal)

Notary Signature
Printed name _____
Notary Public for the State of Montana
Residing at _____, Montana
My commission expires: _____

CITY OF BILLINGS:

BY: _____

Thomas W. Hanel, Mayor

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this ____ day of _____, 20__, before me, a Notary Public for the State of Montana, personally appeared Thomas W. Hanel, known to me to be the Mayor of the City of Billings.

(Notary Seal)

Notary Signature

Printed Name
Notary Public for the State of Montana.
Residing at Billings, Montana.
My Commission expires: _____