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**PLANNED DEVELOPMENT AGREEMENT FOR  
THE EAST 80 AT CARDWELL RANCH**

**BY AND BETWEEN:**

**YEGEN GRAND AVENUE FARM, INC.**

**AND**

**THE CITY OF BILLINGS, MONTANA**

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**PLANNED DEVELOPMENT AGREEMENT FOR  
THE EAST 80 AT CARDWELL RANCH**

This PLANNED DEVELOPMENT AGREEMENT ("Agreement" or "PDA") is made and entered into this 14th day of October, 2008, by and between Yegen Grand Avenue Farm, Inc. ("YGAF, Inc."), a Montana limited liability company, of P. O. Box 959, Billings, MT 59103 and the CITY OF BILLINGS, a Montana municipality ("the City"), of 210 North 27<sup>th</sup> Street, Billings, MT 59101.

**RECITALS**

NOW WHEREAS:

A. YGAF, Inc. owns approximately 47 acres of real property in Billings, Montana, more particularly described as:

Tract 6-A-1 of Amended Tract 6-A, Certificate of Survey No. 2314 Amended;  
Tract 7-A, Certificate of Survey No. 2314, Amended; and Tract 1-A-1 of  
Amended Tracts 1-A and 2, Certificate of Survey No. 2702

The foregoing property shall be known as "The East 80 at Cardwell Ranch," or a related name that may be assigned at a later date.

B. The East 80 at Cardwell Ranch may consist of a mixture of commercial, retail, office, professional, medical and related uses, and multi-family residential housing.

C. YGAF, Inc. desires to place certain building and use restrictions on the property, specify certain land use and design regulations, and create a pattern of development that promotes economy, convenience, and amenity in The East 80 at Cardwell Ranch.

D. YGAF, Inc. enters into this Agreement with the City to ensure that The East 80 at Cardwell Ranch will be developed and maintained as a first-class development consistent with the standards described in this Agreement.

NOW THEREFORE, the undersigned hereby establish and declare the following plan for The East 80 at Cardwell Ranch as set forth herein, which shall apply to all of the real estate described hereinabove, shall bind all of the present and future property owners to such real estate, and shall run with the land.

**AGREEMENT**

**ARTICLE I - PURPOSES**

A. This planned development is intended to create a multi-use, interactive



neighborhood with its own recognizable identity that integrates well with the surrounding community. Circulation patterns will encourage easy pedestrian access and limit vehicular congestion and pedestrian/vehicular conflicts. The development will encourage smart building development in terms of orientation, access, energy consumption and efficiency and create great places to live and work with many necessary services and businesses that are well-integrated and within easy walking distance of each other and adjacent residential areas.

B. This Agreement shall permit flexibility sufficient to meet the demands of commercial, professional and residential markets as they change over time. In accordance with that goal, this Agreement is intended to afford the future owner of each Lot within The East 80 at Cardwell Ranch latitude to design and construct in a way that meets the needs and desires of the time while still ensuring responsible and enduring development for the benefit of the remaining Lots, The East 80 at Cardwell Ranch, and Cardwell Ranch generally.

C. The parties understand, acknowledge and agree that the plan for The East 80 at Cardwell Ranch includes and promotes the following:

1. Creates a planned development zone that permits commercial, retail, office, professional, medical and related uses, and multi-family residential housing in proximity to one another, while protecting and respecting the character and quality of adjacent uses.
2. Encourages flexibility in design and use of commercial and residential zones to allow for economy, convenience, variety and amenity.
3. Enhances the aesthetics of the west Grand Avenue area.
4. Ensures adequate provision of public services such as water, sewer, public safety, open space, storm water control, and vehicular and pedestrian/bicycle circulation consistent with the 2004 Heritage Trail Plan, as updated.
5. Promotes traffic movement and circulation and as many pedestrian connections as possible.

D. Many of the requirements described in this Agreement are the same, similar to, or stricter than requirements found in the Unified Zoning Regulations. However, to the extent that this Agreement creates greater or lesser standards for density, use, bulk, height, parking, signage, traffic circulation, landscaping, or other land use conditions, the City has determined, in accordance with Sec. 27-1303 of the Unified Zoning Regulations, these unique standards are appropriately balanced by the inclusion of mitigating features or special amenities not otherwise required by law or regulation. Some of these that shall be incorporated into The East 80 at Cardwell Ranch and/or Cardwell Ranch include:

1. Construction and landscaping of a functional and attractive pedestrian and bicycle underpass under Shiloh Road to be located south of Grand Avenue and north of Broadwater Avenue that will promote the safe and convenient transportation of children and adults in west Billings while interfacing with the Heritage Trail and other bicycle and pedestrian pathways.



2. Construction and maintenance of trails, landscaping, benches, lighting, signage and other pedestrian and bike pathways, including along the Heritage Park Trail System, at the expense of YGAF, Inc. or subsequent developers and without cost to local taxpayers; and

3. Developed Park Land and Open Space in excess of required minimums, constructed and maintained at the expense of YGAF, Inc. or subsequent developers in conjunction with the City of Billings.

**ARTICLE II – DEFINITIONS**

All terms used herein shall have the same definition and meaning as specified in the Unified Zoning Regulations and the City of Billings Municipal Code unless a contrary definition or meaning is provided herein. The following definitions shall apply to this Agreement:

A. Association: “Association” means the association established to own, operate, and/or maintain the various Heritage Park Trail System segments, Park Land and Open Space, and other improvements.

B. Cardwell Ranch: “Cardwell Ranch” refers to a group of parcels located generally contiguous to The East 80 at Cardwell Ranch and including The East 80 at Cardwell Ranch that YGAF, Inc. believes will eventually be developed to create a single development area featuring the same or complementary zoning requirements, private covenants, and consistent design themes as well as substantial vehicular and pedestrian interconnectivity between the various parcels.

C. Design Review Committee: “Design Review Committee” means the person, entity, or committee appointed by the Association to exercise the rights, duties and responsibilities assigned to it by the Association.

D. Lot. “Lot” means a portion of The East 80 at Cardwell Ranch depicted as a separately identified parcel of land on a recorded subdivision plat or survey 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, as defined below, or property dedicated to the public.

E. Manufacturing. “Manufacturing” means to produce something industrially or to make something into a finished product using raw materials, especially on a large industrial scale.

F. Master Plan: “Master Plan” means a concept plan and drawing showing existing Lots and zones as well as proposed streets, access points, and Park Land and Open Space and other site improvements intended for The East 80 at Cardwell Ranch. The current Master Plan of The East 80 at Cardwell Ranch is attached to this Agreement and marked “Exhibit A.”



G. Park Land and Open Space: "Park Land and Open Space" means any property or facility that the Association owns or in which it holds possessory, use, or maintenance rights for the common use or benefit of property owners in The East 80 at Cardwell Ranch. Park Land and Open Spaces may include but are not limited to park areas, open spaces, common areas, water amenities, community gardens, athletic fields, bike trails, sidewalks, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, community sign areas, and community centers.

H. Special Review approval: "Special Review approval" means approval by the City of Billings pursuant to the Special Review approval process established in the Unified Zoning Regulations and as modified by this Agreement, including the requirement that applicants for special review first obtain approval from YGAF, Inc., which YGAF, Inc. may grant or deny in its discretion, before submitting an application for Special Review Approval to the City.

**ARTICLE III – PERSONS BOUND BY THIS AGREEMENT**

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 East 80 at Cardwell Ranch 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.

**ARTICLE IV – REGULATION OF USES ACCORDING TO PLANNING AREA**

A. Land Use Classifications. Lots located within The East 80 at Cardwell Ranch shall be classified according to use. Uses shall be limited to the locations shown on the Master Plan. No use shall be permitted on any Lot outside the areas indicated on the Master Plan and as permitted by this Agreement. If the actual boundaries of any proposed Lot referenced in the Master Plan or in this Agreement changes upon final platting or thereafter for any reason, including, but not limited to, as a result of re-platting, road dedication, or boundary line adjustment, the zoning classification and other Lot-specific restrictions described in this Agreement that were applicable to the area where the change occurred shall also be deemed to have changed so that the area where the change occurred has the same zoning classification and restrictions as the successor Lot or Lots of which the area becomes a part. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with this Agreement to specifically address any issue created as a result of a change in the external boundaries of any Lot.

B. Permitted Uses in Planning Area 1 and Planning Area 2 (Community Commercial). The uses listed below are permitted in Planning Area 1 of The East 80 at Cardwell Ranch. Planning Area 1 shall consist of proposed Lots 1 and 2 of Block 1, and proposed Lots 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of Block 2. These uses, which are generally commercial in nature, are also permitted in Planning Area 2. Planning Area 2



shall consist of proposed Lot 4 of Block 2. Multi-family uses are only allowed in Planning Area 2, and then only upon Special Review approval. No uses are permitted other than those specifically listed below or that are determined to be analogous in accordance with Article IV.F. Uses followed by "SR" (Special Review) may only be permitted with consent of YGAF, Inc. and after Special Review approval as described in Article IV.D. Some uses may also be subject to a special level of review by YGAF, Inc. or the Association under private covenants or other agreements, including in particular, but not limited to, those designated with an asterisk (\*).

- Accessory detached structures associated with a permitted principal structure \*
- Adult foster family care homes (up to four aged or disabled adults) \*
- Animal boarding facilities (SR) \*
- Administrative and research facilities \*
- Animal groomers
- Art galleries
- Assisted living facilities (SR) \*
- Auto parts supply (SR) \*
- Bakeries
- Banks, credit unions, and savings and loan facilities
- Barber and beauty shops
- Bicycle sales, rental, and repair shops
- Boarding, lodging and bed and breakfast houses
- Bookstores
- Breweries associated with eating establishments (SR) \*
- Broadcast station offices (but all antennae and satellite dishes must comply with other provisions of this Agreement) \*
- Building supply stores and hardware stores (but no lumber yards) (SR)
- Bus stops
- Camera, hobby, toy, and gift stores
- Car wash, only if incidental to fuel sales (SR) \*
- Casinos and gambling activity, as defined in M.C.A. § 23-5-112, if incidental to another permitted use and with written consent of YGAF, Inc. \*
- Ceramics and pottery shops
- Charitable, educational or nonprofit institutions
- Child day care centers (up to 13 children)
- Churches, synagogues, and places of worship (SR) \*
- Clinics, medical, dental, and surgical for the care of human patients
- Clothing and apparel stores
- Community centers
- Convalescent, nursing, and retirement homes
- Convenience and specialty food stores (but no fuel sales except upon Special Review)
- Cultural, educational, and instructional facilities
- Denturists



- Department stores \*
- Drive-through facility (SR) \*
- Drug stores (SR) \*
- Eating establishments (alcohol served) (SR) \*
- Eating establishments (no alcohol served) (SR) \*
- Educational and instructional facilities including public and private elementary and secondary schools, colleges, universities, professional schools, and junior colleges (but not trade schools) (SR) \*
- Finance and loan companies
- Fire stations (SR) \*
- Florists
- Flower shops and nurseries (provided that there is no outside storage)
- Food and grocery stores
- Fuel stations – gas or diesel (but not to include truck stops as defined by Section 27-201 of the Unified Zoning Regulations and prohibited below) (SR) \*
- Furniture – retail only
- Greenhouses for on-site, retail sales if incidental to another permitted use
- Hardware and appliance – retail only
- Health clubs and fitness related businesses
- Hospitals \*
- Hotels and motels
- Jewelry stores
- Laundry and/or dry cleaning drop-off and pickup store without drive-through facility
- Laundry and/or dry cleaning drop-off and pickup store with drive-through facility (SR) \*
- Libraries, museums, and art galleries
- Liquor stores
- Medical clinics
- Membership organization offices
- Minor component assembly incidental to another permitted use
- Multi-family residential (Planning Area 2 only) (SR)
- Offices – all, including business professional, medical, and dental
- Office equipment stores – retail only
- Office supply and equipment, copying and mail services stores – retail only
- Open spaces, park areas, water amenities, community gardens, athletic fields, bike trails, playgrounds, and walking paths
- Park Land and Open Space
- Parking facilities, including above or below ground parking garages \*
- Pet stores
- Pharmacies
- Photo studios, shops, and processing – retail only
- Physical therapy facilities
- Police stations (SR) \*



- Postal service facilities without truck terminal facilities
- Public administration facilities, including government facilities, except correctional institutions
- Rehabilitation centers
- Rental car dealerships (SR) \*
- Retail stores
- Retirement homes \*
- Same-day medical care centers
- Sports medicine and rehabilitation facilities
- Surgery centers \*
- Theaters
- Veterinary clinics and hospitals \*
- Wine stores
- Any additional use permitted in a Community Commercial zoning district upon prior written consent of YGAF, Inc. if consistent with the Unified Zoning Regulations and after Special Review approval, provided that such use is not otherwise limited or prohibited herein. \*

C. Permitted Uses in Planning Area 3 (Residential Multi-family). Residential multi-family use is permitted in Planning Area 3 of The East 80 at Cardwell Ranch. Planning Area 3 shall consist of proposed Lots 5 and 6 of Block 2. This area is intended primarily to accommodate apartments, townhomes, condominiums, multi-plexes, and other multi-family complexes (but not detached single family homes) and uses permitted in the Residential Multi-Family district as defined in the Unified Zoning Regulations. Multi-family residential use may also be permitted in Planning Area 2 (proposed Lot 4 of Block 2) upon Special Review approval. No uses are permitted in these areas other than those specifically listed below or that are determined to be analogous in accordance with Article IV.F.

- Accessory detached structures associated with a permitted principal structure
- Bus stops
- Community centers
- Home occupations
- Multi-family residential buildings
- Park Land and Open Space
- Any additional use permitted in a Residential Multi-Family district upon prior written consent of YGAF, Inc. if consistent with the Unified Zoning Regulations and after Special Review approval, provided that such use is not limited or prohibited herein.

D. Special Review Procedure and Criteria.

1. Procedure. The City of Billings may authorize the uses described in Article IV by granting Special Review approval if the proposed use conforms to the following standards and criteria. All applications for special review shall include the information required by the Unified Zoning Regulations. The procedure for



reviewing the request shall conform to the Unified Zoning Regulations.

2. Criteria to be Considered. In considering a special review request, in addition to the review criteria in the Unified Zoning Regulations, the City shall consider the following criteria:

- a. YGAF, Inc. has given its written consent to the special review request.
- b. The proposed use is consistent with the terms, intent and objectives of this Agreement.
- c. The proposed use is compatible with surrounding uses or is otherwise sufficiently screened and separated from adjacent land in such a way that any adverse effects are adequately mitigated.
- d. The proposed use will not attract large volumes of vehicular traffic that will create traffic congestion that cannot be safely and effectively managed and regulated with proper design and traffic control equipment.
- e. The proposed use meets architectural design guidelines or will use an existing building for its purposes.
- f. Minimum visual and functional conflict will be created between the proposed use and nearby uses.
- g. Anticipated noise and congestion created by the use will be comparable to the levels created by other uses in the vicinity.
- h. The use shall not require servicing or deliveries of materials, stocks, or supplies by trucks having more than three (3) axles.
- i. The proposed use will not be materially detrimental to other properties.

E. Prohibited Uses in All Areas. The following operations and uses shall not be permitted on any property in The East 80 at Cardwell Ranch, regardless of where the property is located:

- Amusement park services or facilities
- Apparel fabrication and fabrication of products made from fabrics and similar materials
- Arcades, including but not limited to video arcades
- Auction houses or auction yards
- Auto body and collision repair
- Automotive sales, leasing, repair, service, salvage, or storage
- Beverage bottling plant or wholesaling operations



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- Billboard signs
- Body alternation salons – any establishment engaged in body painting, body piercing, or tattooing
- Building fabrication except construction of buildings for use on-site
- Building subcontractor operations other than offices only
- Bus terminal and maintenance facilities
- Campground
- Casinos and gambling or gambling activity, as defined in M.C.A. § 23-5-112, unless incidental to another permitted use with written consent of YGAF, Inc.
- Cellular towers not included in building structures
- Crematoriums
- Dry cleaning or laundry plant or public Laundromat, (not applicable to facilities for pickup and delivery by the ultimate consumer)
- Drug paraphernalia – any business engaging in the sale of so-called drug paraphernalia
- Dumping of concrete, cement residue, refuse, dirt, garbage or fill materials without authority of property owner
- Electronic component manufacturing, unless light manufacturing and incidental to a permitted use
- Equipment rental shop
- Excavation – businesses engaged in commercial excavation, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction
- Exotic dancing – any establishment permitting exotic dancing, including semi-nude and nude clubs
- Fire sale or bankruptcy sale
- Fireworks – fireworks manufacture and/or sales
- Flea markets
- Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations
- Foundries and plant operations
- Furniture fabrication
- Garbage – any dumping, disposing, incineration or reduction of garbage provided, however this prohibition shall not be applicable to garbage compactors located near the rear of any building
- Go-cart tracks
- Greenhouses for wholesale purposes
- Gun and archery range
- Guns and ammunition – the sale of firearms and ammunition, unless ancillary to a general retail store or sporting goods store
- Heavy equipment sales, service, and storage
- Ice manufacturing for resale of ice if not intended for use on-site
- Illegal drugs – the sale, manufacture, or possession of illegal drugs
- Industrial production or manufacturing facilities
- Jails, prisons, half-way houses for pre-release inmates, and/or detention



- facilities
- Junk shops
  - Labor or migrant worker camps
  - Lumber yards
  - Machine and welding shops
  - Manufactured housing – the sale, maintenance, and repair and/or storage of manufactured housing, mobile homes, boats, trailers, or recreational vehicles
  - Manufacturing
  - Massage parlors (excluding therapeutic massage)
  - Metal fabrication and manufacturing
  - Mill work and cabinet shops
  - Mineral extraction – any non-office sale, extraction, or storage of sand, gravel, or minerals
  - Mini storage facilities
  - Motorized sports vehicle repair, storage, and/or sales (including parts sales)
  - Mining and related activities – mining, drilling for, or removing oil, gas, or other hydrocarbon substances
  - Motocross tracks
  - Motorcycle racing
  - Obnoxious odors, etc. – any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in The East 80 at Cardwell Ranch
  - Paper warehouses
  - Pawn shops
  - Power poles and overhead power lines – installing new power poles and overhead power and above-ground utility lines as well as upgrading any existing poles to larger structures; provided, however, this shall not prohibit any existing power poles and above-ground lines, and shall not prohibit adding new lines to any existing poles
  - Propane sales unless incidental to a fueling station as permitted by special review, or as incidental to hardware sales
  - Race tracks
  - Recreational vehicles – the commercial sale, maintenance, rental or repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles. The private repair or storage of such vehicles must comply with other provisions of this Agreement.
  - Recycling centers
  - Repair shops, if the shop facilities include open or visible storage
  - Roller skating rinks
  - Roping and rodeo arenas
  - Sanitary dumps
  - Scrap or waste material processing
  - Septic systems
  - Sexually oriented businesses – sexually oriented businesses as defined by



- Section 27-611 of the Unified Zoning Regulations
- Stables – not to be construed to exclude existing farming operations or a continuation of existing farming operations
  - Storage facilities other than garages associated with residential structures
  - Super Stores – defined as any structure over 40,000 square feet in total useable area
  - Surplus store
  - Taxidermists
  - Tire sales, except as incidental to the operation of a general retail store
  - Title loan businesses
  - Towers and dishes – freestanding communication towers and satellite dishes greater than 98 inches in diameter
  - Trailer parks and campgrounds – mobile home parks, trailer parks, or recreational vehicle campgrounds or any commercial establishment that permits overnight parking of recreational vehicles
  - Truck stop as defined by Section 27-201 of the Unified Zoning Regulations
  - Truck terminals cartage operations, and similar uses
  - Truck wash as defined by Section 27-201 of the Unified Zoning Regulations
  - Trucks – sale, leasing, manufacture, and repair of trucks
  - Trucking operation warehouses
  - Utility sub-stations, utility maintenance facilities or buildings, and other utility installations other than utility lines, utility boxes, and other facilities used to serve an individual Lot
  - Warehouses
  - Wholesale lumber and building materials
  - Wholesale distribution and sales

F. Analogous Uses. If a use is not specifically permitted, specifically prohibited, or specifically subject to special review, the zoning coordinator shall determine whether the use is permitted or prohibited or subject to special review by determining whether it is most closely analogous to a use that is specifically permitted, prohibited, or subject to special review. The decision of the zoning coordinator shall not become effective until it has been reviewed and approved by YGAF, Inc.

G. Procedure for Obtaining YGAF, Inc. Approval. Any developer of property in The East 80 at Cardwell Ranch shall obtain the written approval of YGAF, Inc. prior to submitting any application for subdivision, zone change, building permit, or design approval of any kind to the City or any other government authority. The City shall not accept any such application unless the developer first presents written evidence of YGAF, Inc.'s approval. Neither YGAF, Inc. nor the City shall approve the developer's application unless the proposed development complies with the requirements of this Agreement.

#### ARTICLE V – OTHER REGULATIONS GOVERNING USE



A. Continued Farming Operations. YGAF, Inc. may, in its sole and unreviewable discretion, permit farming operations and livestock grazing on undeveloped parcels. Permission shall be granted exclusively for the continuation of prior and existing livestock and farming operations, whether on ground leased or owned, and shall allow the use of stables, machinery, storage, and any other uses, infrastructure or equipment incidental to or necessary for operations associated with approved or existing farming operations.

B. Parking Limitations. No parking shall be permitted on any street or any place other than in paved and designated parking spots. Each owner of property within The East 80 at Cardwell Ranch shall be responsible for compliance with the foregoing by all tenants, customers, visitors and employees. Adequate parking sufficient to meet City requirements shall be provided by each owner and tenant of property within The East 80 at Cardwell Ranch for customers, visitors, and employees. All off-street parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All parking lots must be developed with proper integration of landscaping and screening elements as provided in this Agreement.

C. Storage of Inoperable, Junk and Recreational Vehicles. Owners and residents of The East 80 at Cardwell Ranch shall comply with Section 27-601 of the Unified Zoning Regulations and all other laws or regulations governing vehicle storage. In addition, no inoperable or junk vehicle shall be permitted to park on any property within The East 80 at Cardwell Ranch outside an enclosed structure for a period of more than two days, and after this period it shall be deemed abandoned. No snowmobiles, all-terrain vehicles, off-road motorcycles, trailers (utility, horse, boat, snowmobile, etc.), boats, campers, motorhomes, recreational vehicles, or other equipment generally associated with recreation and leisure time activity shall be permitted to operate within the confines of The East 80 at Cardwell Ranch, except while being transported into and out of The East 80 at Cardwell Ranch, and all such vehicles shall only be stored within an enclosed structure and shall not be parked on the street or in any driveway, parking lot, or other area visible to neighboring properties for a period of more than two days.

D. Outside Storage. Outside storage of junk shall not be permitted on any Lot in The East 80 at Cardwell Ranch for any period of time. Outside storage of merchandise on any non-residential property shall comply with Section 27-601(b) of the Unified Zoning Regulations governing storage and display of merchandise in certain commercial districts.

E. Maintenance of Lots.

1. Maintenance of Property Generally. The owner of any property within The East 80 at Cardwell Ranch shall at all times keep and maintain the owner's property and buildings, improvements, and appurtenances thereon in a good, safe, clean, and attractive condition and comply in all respects, at the property owners' sole expense, with this Agreement, and all applicable governmental, health, fire, and safety laws, ordinances, regulations, requirements, and directives. The property owner shall at regular and frequent intervals remove, at the property owner's sole expense, any garbage or rubbish that may accumulate upon such property.

2. Maintenance of Buildings. It shall be the sole responsibility of the



owner of any property within The East 80 at Cardwell Ranch to maintain all buildings and structures, improvements, and appurtenances located thereon in a good and clean state of repair and condition and in accordance with this Agreement, and all applicable laws, ordinances, regulations, requirements and directives applicable to the property.

3. Maintenance of Unimproved Sites. Property that is not improved or built upon shall be maintained in a good, safe, clean, and attractive condition by the property owner. Weeds, brush, trash, and rubbish must be removed at least every three months. Nothing in this paragraph shall prevent YGAF, Inc. or its agents from carrying on existing or approved agricultural activities consistent with this Agreement.

F. Utilities to be Buried. All utilities, including but not limited to electrical distribution and transmission lines, shall be buried. Any above-ground junction boxes or other surface elements that cannot be buried shall be screened by structural or landscaping elements. Any existing overhead power lines shall be permitted to remain in their present location. Additional lines may be added to any existing power poles so long as the poles remain in substantially the same location. However, if such power poles or power lines are ever moved or their size is changed, or if substantial repairs or replacement is undertaken, the owners of the property and the owner(s) of the power lines shall bury all lines, including the lines being moved, repaired or replaced.

G. Home Occupations. Unless otherwise specified in this Agreement or unless more restrictive limitations are adopted by subsequent developers or covenants, every Home Occupation shall be subject to the same restrictions described in the Unified Zoning Regulations. A Home Occupation is subject to the same restrictions described in the Unified Zoning Regulations except as follows:

1. The Home Occupation should not generate, on average, more than one (1) vehicle trip during any hour measured between 7:30 A.M. and 6:00 P.M.;
2. The activity must constitute use permitted outright in Planning Area 1 or Planning Area 2 established in this Agreement; and
3. Residents and property owners are advised that carrying on certain Home Occupations may require compliance with special code requirements applicable to commercial establishments. All residents and property owners are advised to consult with local building officials before establishing a Home Occupation. Residents and property owners shall comply with all applicable codes and other government regulations in accordance with this Agreement.

**ARTICLE VI - SITE DEVELOPMENT, BUILDING & LANDSCAPE STANDARDS**

A. Development Standards Generally. These standards are provided to establish minimum guidelines for the development of facilities in The East 80 at Cardwell Ranch, including site work, buildings and accessory structures, landscaping, and signage. These guidelines will not define specific styles of architectural character for the various uses



possible in The East 80 at Cardwell Ranch. They are intended to establish a minimum level of quality for the physical settings within The East 80 at Cardwell Ranch and for the basic architectural design of the structures while allowing flexibility to adjust and evolve with changes in technology and architectural standards. These guidelines will specifically control the treatment of the public areas, streetscape, pedestrian areas, landscaping and signage to create a setting in which a wide variety of individual buildings of high quality can exist in harmony. They will provide developers with a guide that will define the aesthetic quality of The East 80 at Cardwell Ranch's architecture yet allow latitude for unique, individual expressions of the architectural requirements and image of each building development. Subsequent developers and property owners are advised that covenants and other private agreements may also control development in The East 80 at Cardwell Ranch and that it may be necessary to obtain written consent from YGAF, Inc. and/or the Association prior to application for land use approvals and construction.

B. Site Development Standards.

1. Street Types and Standards. In the absence of a contrary agreement with the City of Billings, all streets shall be developed to the standards of the City of Billings for width, curb, gutter, sidewalk, cross-section, and surface treatment. All streets shall be developed as required to accommodate the traffic loads contributed by development within The East 80 at Cardwell Ranch and adjacent properties.

2. Access. Shared driveway accesses between adjacent non-residential Lots are encouraged. If a traffic accessibility study is required for a proposed use on a Lot, the study shall include traffic from an adjacent Lot if the driveway is proposed to be shared.

3. Lot Coverage. The total combined lot coverage for all structures on any non-residential Lot shall not exceed fifty (50) percent of the total square footage of the Lot. The total combined lot coverage for all structures on any residential multi-family Lot shall not exceed fifty-five (55) percent of the total square footage of the Lot.

4. Setbacks.

a. Community Commercial area. The minimum building "front yard" setback from the property line for all non-residential development shall be 25 feet, providing, however, that the clear vision triangle is maintained as required by the Unified Zoning Regulations. The "front yard" shall be determined by the Association's Design Review Committee based on the specific use and site plan for each Lot. Side and rear yard setbacks shall be at least 20 feet from the property line where a residential use abuts a commercial use. There shall be a minimum 10 feet wide side and rear yard setback for all other non-residential Lots. All arterial setbacks as outlined in the Unified Zoning Regulations must also be maintained, but the minimum front setback along Grand Avenue and Zimmerman Trail shall be at least 80 feet (measured from center-line).



b. Residential Multi-family area. Setbacks for multi-family residential Lots must comply with the Unified Zoning Regulations. Setback areas must be landscaped except for driveways and parking areas, which may not exceed 20% of any setback area. All developments are required to landscape adjacent to and along the length of all public rights-of-way, excluding driveways. A lot owner may request a variance from these setback requirements after obtaining the written consent of YGAF, Inc. by following the variance procedures established by the Unified Zoning Regulations.

5. Zone Boundaries. It is recommended that the transitional areas between different use classifications be designed to complement the adjacent land uses. Use of buffering landscaping elements and building mass that approximates that of the adjacent zone in these areas is encouraged to help achieve a harmonious change between properties and promote the sense of a single, unified neighborhood.

6. Parking. Adequate parking shall be provided by each owner and tenant of property within The East 80 at Cardwell Ranch for customers, visitors, employees and residents. All parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All parking lots must be developed with proper integration of landscape and screening elements as provided herein. Minimum parking requirements shall meet the standards of the City of Billings for each use proposed for a Lot but shall not exceed 110% of the City's minimums. Joint parking and reciprocal access agreements are encouraged.

7. Loading, Storage and Service Areas. No loading, storage or service area shall be permitted in the front portion of any Lot within The East 80 at Cardwell Ranch. All loading and service areas shall be screened from the ground-level view of adjacent properties and streets. Screening elements shall be of landscape materials or materials similar to those used to construct the primary structure. Storage areas shall comply with all applicable building setbacks.

8. Garbage Collection. Lots used for commercial purposes and multi-family housing that includes more than two (2) dwelling units shall store garbage only in an approved garbage collection area. Lots used for other residential purposes may place a garbage container on the sidewalk or driveway on the designated pickup day. At all other times, all residential garbage containers shall be stored in an enclosed garage or in an approved garbage collection area. Garbage collection areas shall adhere to the following standards:

a. All outdoor garbage containers and collection areas shall be screened visually with at least a six foot (6') enclosure so that they are not visible from adjacent properties, streets, or Park Land or Open Space.

b. No garbage containers or collection areas shall be located between a street and the front of a building.

c. Deposited garbage shall not be visible from outside the garbage container or collection area.



d. Garbage containers and collection areas shall be designed with durable structural materials, finishes and colors that coordinate with the overall architectural scheme of the adjacent buildings.

e. Garbage collection areas and containers shall regularly be cleaned, repaired and painted to prevent the accumulation of garbage, grime, grease, and other unsightly or unpleasant conditions.

9. Pedestrian Walkways and Bikeways. All property development shall provide for pedestrian access along or through each Lot to create a system of pedestrian paths and walkways. Pedestrian paths shall be a minimum of five feet (5') wide, constructed of hard surface materials such as concrete or asphalt meeting the requirements of the City of Billings. The location, layout and construction features of bike paths shall conform to the Heritage Trail Plan of the City of Billings and may be extended through The East 80 at Cardwell Ranch to connect to other development at the perimeter of The East 80 at Cardwell Ranch. Bike paths shall be constructed according to the design standards established by The Heritage Trail Plan and shall be located as determined by the developer with the consent of YGAF, Inc. All pedestrian and bikeway access along roads shall be separated from the paved road surface by a landscaped boulevard at least five (5) feet wide.

10. Bicycle Parking. Each non-residential and multi-family residential Lot accommodating more than three (3) Dwelling Units shall provide at least one bike parking space equipped with bicycle racks permanently anchored in marked areas.

11. Accessory Structures, Fences, and Walls. Construction of accessory structures, fences, and walks shall follow these standards:

a. All fences shall comply with the City of Billings, Montana clear vision standards.

b. No chain link fencing shall be installed without the express written approval of YGAF, Inc.

c. No fence or wall shall exceed a height of six feet (6'), except in garbage collection areas.

d. Accessory structures, fences, and walls shall be of a character, color, and material to match the adjacent buildings, shall coordinate with the overall architectural scheme of the adjacent buildings, and shall be integrated into the landscaping of the Lot.

12. Snow Storage. Parking lots or areas adjacent to parking lots shall provide for on-site snow storage. Snow storage areas shall not be adjacent to streets. Common storage areas between adjacent Lots are encouraged. Landscaping shall be maintained if the storage is not done in a paved parking area. Parking spaces needed to satisfy minimum parking requirements shall not be used for snow storage.



13. Site Lighting Standards.

a. All outdoor pole lighting shall be fully shielded (no light emitted by the fixture is projected above the horizontal plane of the fixture) and mounted at heights no greater than eighteen (18) feet above grade.

b. All outdoor lighting, except street lights, shall be located and aimed or shielded so as to minimize stray light trespassing across property boundaries.

14. Exterior Mechanical and Electrical Equipment and Transformers. All exterior mechanical and electrical equipment and transformers used to service a building or group of buildings shall be screened or enclosed within the structure of a building or otherwise screened from view. Screening may consist of year-round plantings, shrubbery, or durable enclosures of such height and density as may be deemed sufficient by the zoning coordinator and YGAF, Inc.

C. Building Design. The following standards shall govern building design for all property within The East 80 at Cardwell Ranch.

1. Temporary Structures. Temporary structures are not allowed, except temporary structures may be used for construction only during the period of construction and shall be removed from The East 80 at Cardwell Ranch immediately following substantial completion of the permanent structure in accordance with the CCRs.

2. Impact on Other Structures. No building shall be built in a manner that will adversely affect the structural integrity of another building.

3. Building Height Limits. Structures in The East 80 at Cardwell Ranch shall not exceed a height limit of forty-five (45) feet from ground level. This height limitation applies to the uppermost, enclosed portion of the structure. Antennae, satellite receivers, mechanical equipment and other non-enclosed portions of a structure that otherwise comply with this Agreement shall be appropriately screened and may extend no more than ten (10) feet above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

4. Building Size Limits. The enclosed portion of any structure in The East 80 at Cardwell Ranch shall not exceed 40,000 square feet (footprint). Buildings over 40,000 square feet (footprint) may be permitted upon Special Review approval.

The enclosed portion of a structure is the portion that is contained on all sides and overhead and does not include decks, patios, walkways, driveways, etc.

5. Roof-mounted Mechanical Equipment. Mechanical equipment placed on a roof shall be screened to a height at least the height of the mechanical equipment. All roof-mounted equipment, including, but not limited to, HVAC units, exhaust



vents, exhaust vent stacks, and miscellaneous penetrations must be integrated into the overall roof design. Equipment shall be enclosed or screened from view with materials and forms designed into the shape and character of the building's design.

6. Communication Towers, Antennae, and Satellite Receivers. No free-standing communication towers, antennae, or satellite receivers are allowed. No structure-mounted antennae with visible components greater than 60 inches in height or satellite receivers greater than 24 inches in diameter are allowed unless they are screened from the view of adjacent streets and properties by structural components or year-round landscaping elements. No satellite receivers more than 96 inches in diameter are allowed. Satellite receivers more than 24 inches but less than 96 inches are subject to special review under Article IV.B.

7. Metal Buildings. Pre-engineered metal buildings or prefabricated metal buildings are not permitted on any property within The East 80 at Cardwell Ranch.

8. Sloped Roof Elements. Any building with sloped roof elements shall provide protection to pedestrians and other properties from the effects of sliding snow.

D. Landscape Design Standards. The following standards shall govern landscaping for all property within The East 80 at Cardwell Ranch.

1. Minimum Requirements. All landscaping shall, at a minimum, comply with the requirements of the City of Billings and be completed within thirty (30) days after the substantial completion of the building(s) constructed on the property; provided, however, that if weather conditions do not permit such landscaping to be completed within thirty (30) days then such landscaping shall be completed as soon thereafter as weather conditions permit. Bonds shall be required if landscape completion is delayed.

2. Right-of-Way and Setback Areas. The area between any street to the property line and from the property line to the minimum setback line shall be landscaped with a combination of trees, shrubbery, foliage, and grass or ground cover. These areas shall be maintained by the adjacent property owner unless responsibility for maintaining the same has been assumed by the Association.

3. Irrigation. All landscaping must be irrigated with an underground sprinkler system, which must be maintained so as to provide sufficient water for landscaping growth, or by use of a joint or community irrigation plan.

4. Parking Lot Landscaping – Perimeter. The perimeter of all parking areas shall be landscaped with plants that provide intermittent screening but allow some visual penetration into these areas when viewed from adjacent streets, service areas, major building entrances, and significant outdoor spaces. Such screens shall consist of deciduous and evergreen plant material at least two feet (2') in height.



5. Parking Lot Landscaping – Interior. A minimum of twenty (20) square feet of internal landscaping shall be provided for each parking space. Two (2) canopy or evergreen trees and five (5) shrubs shall be required for every eight (8) parking spaces. All landscaped areas shall contain ground cover such as sod, shrubs, flower beds, or living plant material. No more than twenty-five (25) percent of the total landscaped area measured by square footage shall consist of fountains, rock, bark chips, stepping stones, or similar non-living material. Each parking lot landscaped area shall include at least one dimension (width or length) that is at least eight (8) feet. Internal parking lot landscaping shall be proportionately disbursed at the developer's discretion in order to define aisles and limit the length of unbroken rows of parking. The maximum width or length of any unbroken length of paved parking area shall be one hundred (100) feet. Landscaped areas shall be on a scale proportionate to the parking lot. The parking lot landscaping shall, at a minimum, meet all landscaping requirements of the City of Billings. All landscaped areas shall be irrigated, maintained, and kept free of weeds, debris, and litter. Dead or dying materials shall be replaced immediately. Landscaped areas within parking lots or along the perimeter of the property must be protected from vehicular traffic through the use of continuous concrete curbs, extruded asphalt, or other approved, permanent barriers. Evergreen trees are discouraged for internal parking areas if they will limit sight lines at full maturity.

6. Non-Parking Lot Landscaping. All areas not covered by structures, parking, circulation surfaces, pedestrian or bicycle paths shall be landscaped. At least seventy-five percent (75%) of this landscaped area should be living plant material. The remaining portion may include: stone, rock, bark ground cover; decorative structures; water features; benches and other landscape features appropriately dispersed and coordinated throughout the live vegetation. The use of native, drought-tolerant plant materials is strongly encouraged and may be required under applicable covenants, conditions, or restrictions. The planting of trees should be done in such a manner as to provide maximum solar efficiency throughout the site.

7. Landscaping Loading and Service Areas. Loading and service areas shall be enclosed either with solid screen walls not to exceed six feet (6'), or landscaping elements planted in such a manner to create a visually opaque screen when mature. The plant material screen must develop its maturity within three (3) years from the time of planting.

- Canopy Tree. A canopy tree is a species of tree that normally bears crown foliage no lower than six feet (6') above ground level upon maturity. The minimum size of canopy trees shall be two and one-half inches (2 1/2") in caliper at the time of installation. Caliper shall be defined by the American Nurseryman Standard Definition.
- Evergreen. An evergreen tree or shrub is a species that normally retains leaves/needles throughout the year. Minimum size of evergreen trees shall be six feet (6') in height at the time of installation.
- Shrubs. The minimum size of a shrub shall be at least 2 gallons but



preferably 5 gallons.

**ARTICLE VII – PARK LAND AND OPEN SPACES**

A. Park Land and Open Spaces Generally. The statutory park dedication requirement for The East 80 at Cardwell Ranch shall be satisfied either by making a donation of cash in lieu of land or the City will waive the park dedication requirement for this planned development if the land permanently set aside for park and recreational use by the residents meets the requirements of M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009. The Park Land and Open Spaces available to residents and users of The East 80 at Cardwell Ranch shall include privately or publicly owned or accessible open space, potentially including parks, plazas, gardens, trails, and/or bikeways. Such Park Land and Open Spaces may be located within The East 80 at Cardwell Ranch or outside The East 80 at Cardwell Ranch in accordance with M.C.A. § 76-3-621(6)(d)(i). All Park Land and Open Spaces shall be maintained to meet or exceed any then-existing City maintenance standards. All Park Land and Open Spaces shall be built and maintained in order to fulfill the purposes set forth in Article I of this Agreement. Park Land and Open Spaces will be developed and constructed at the cost and expense of the property owners.

B. Park Land and Open Space Maintenance. The maintenance of Park Land and Open Spaces will be funded by the Association with possible participation by individual property owners or the City through a park maintenance district for any park land dedicated to the public.

**ARTICLE VIII – SIGNS**

A. Signage. The following standards shall govern signage for all property within The East 80 at Cardwell Ranch and shall apply to all ground-mounted, pole-mounted, and building-mounted signs.

B. Purpose, Intent and Scope. The purpose and intent of this section is to promote commerce, traffic safety, and community identity while improving the visual environment of residential, commercial, and industrial areas.

C. Exempt Signs. This section of the Agreement shall not regulate traffic and directional signs installed by a governmental entity or in a private parking lot; merchandise displays; national flags; legal notices required by law; or historic site monuments/plaques.

D. Definitions. The definitions used in this Agreement may be found below or in the Unified Zoning Regulations.

Individual Business. One business on one parcel, provided that the parcel is not part of a multiple business complex; and also provided the parcel is not part of a group of multiple contiguous parcels under the same ownership.



Monument Sign. A sign and supporting structure constructed as a solid structure, or one that gives the appearance of a continuous, non-hollow, unbroken mass.

Multiple Businesses. Multiple businesses include businesses that may be located in a single building or in multiple buildings on a single site.

Support Structure(s). Posts or columns and their anchors and bolts that structurally support the sign attached to it.

E. General Provisions.

1. City Ordinances. All signage shall comply with the Unified Zoning Regulations unless further limited herein, or as addressed in the CCRs.

2.

3. Types of Signs. The following standards shall govern the types of signs permitted within The East 80 at Cardwell Ranch:

a. Collective Signage. Adjacent property owners in The East 80 at Cardwell Ranch are encouraged, when appropriate, to utilize collective signage which contains the names of more than a single owner, business, tenant, or store;

b. Wall Signage. Wall signs are limited to no more than one (1) per façade facing a street and two (2) signs per building. All wall signs shall be placed parallel and attached firmly to the building's façade.

F. Exempt Activities. The following shall not require approval, provided that these exemptions shall not be construed as relieving the owner from the responsibility to comply with the provisions of this Agreement or any other law or ordinance, including the Uniform Zoning Regulations.

1. The changing of the advertising copy or message on a lawfully erected sign that is currently in compliance with this Agreement, reader board, or similar sign specifically designed for replaceable copy;

2. Painting, repainting, or normal maintenance, unless a structural, electrical, aesthetic, or color change is made;

G. Prohibited Signs. The following signs are prohibited in all zones unless otherwise specifically permitted:

1. Flashing, blinking, moving, exposed light, iridescent colors, outdoor signs with visible neon or gas tubing, fluorescent materials, animated or audible signs, streamers, balloons and searchlights;

2. Bench signs;



3. Signs which by coloring, shape, working resemble or conflict with traffic control signs or devices;
4. Signs that create a safety hazard for pedestrian or vehicular traffic;
5. All electronic signs, video boards;
6. Portable signs, trailer signs and signs attached to structures with one or more wheels;
7. Rooftop signs;
8. Billboard or off-premises signs;
9. Pole signs;
10. Banner signs unless specifically permitted as addressed in the CCRs.

H. Temporary Signs:

a. Temporary signs can be used for development, construction, design team, sale or leasing information on a temporary basis. Typically such signs are freestanding, ground-mounted signs though banner signs may be approved as specified in the CCRs. Such signs will be unlit and limited in size to 32 square feet and 8 feet in height above grade for commercial uses and five square feet and five feet above grade for residential and agricultural uses.

I. Sign Location and Setback.

b. Freestanding identity signs shall be setback a minimum of 8 feet from the face of curb or edge of pavement of a public street, and shall not be placed within the right-of-way.

J. Sign Area and Calculation.

1. Sign area for wall signs is equal to the message area of a sign, including graphics, letters, figures, symbols, trademarks or written copy per the standards established by the City of Billings for sign area calculation;

2. The sign area of a monument sign consisting of one sign shall be calculated the same as for wall signs;

3. The sign area of a freestanding sign consisting of more than one sign shall be computed by adding together the total area(s) of all signs. Any portion of the sign not necessary for structural support of the sign or any structural support greater than two (2) feet in width shall be considered in the determination of the square footage of the sign. Area calculation does not include decorative rocks or landscaping



adjacent to a monument sign;

4. The sign area for multiple-sided signs shall be calculated as follows:

a. The total sign area for a two-sided sign shall be calculated using one face, therefore allowing both faces to be of equal size (for example a two-sided sign has two faces with 18 square feet per side, therefore the sign area is 18 square feet);

b. The sign area for a three-sided sign shall be equal to the total amount of sign area a one-sided or two-sided sign is allowed. (For example, in item 4A above, a two-sided sign is allowed 18 square feet of sign area per side, which equals 36 total square feet. If a three-sided sign is used instead of a one-sided or two-sided signed, the three-sided sign may allocate the 36 square feet among three sides, therefore allowing three sides with 12 square feet per face for a total of 36 square feet of sign area.);

K. Maintenance of Signs.

1. Any sign that has been approved or that has been issued a permit shall be maintained by the owner or person in possession of the property on which the sign is located. Maintenance shall be such that the signage continues to conform to the conditions imposed by the sign permit and this Agreement;

2. Any damaged sign, including signs with burned out lights, shall be repaired or replaced within ten (10) business days;

3. Any signage which has been damaged to such extent that it may pose a hazard to passersby shall be repaired or removed immediately;

L. Nonconforming Signs. Nonconforming signs are not permitted. If any sign is erected or installed without proper permits or approvals, it shall be considered nonconforming and shall be removed. All signs which do not conform to the sign standards in this Agreement are nonconforming and shall be removed or changed to conform to these standards. Any sign not removed within ten (10) business days of notice of nonconformance will be removed by the YGAF, Inc. or its assigns, and the costs for removal plus a handling fee to be assessed by the YGAF, Inc. or its assigns shall be the responsibility of the owner of the sign.

M. Landscaping for Monument Signs. All monument signs shall be located in a landscaped area. Landscaping should be appropriately sited to ensure that signs are not blocked or obscured by trees or bushes.

N. Sign Illumination. Externally illuminated signs shall have low intensity lighting, confined to the sign, and positioned and shielded to minimize impacts to the surrounding area(s). Internally illuminated signs shall have low intensity lighting.



O. Sign Approval. All signage in The East 80 at Cardwell Ranch shall first be approved by YGAF, Inc. as a condition of any zoning approval issued by the City of Billings.

**ARTICLE IX - CROSS EASEMENTS FOR VEHICLES AND PEDESTRIANS**

At the time each Lot is developed, or at such earlier time as may be determined by YGAF, Inc. or the developer of the Lot, YGAF, Inc. or the developer shall grant a non-exclusive easement for pedestrian and bicycle ingress and egress for the benefit of all property owners in The East 80 at Cardwell Ranch and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the part of any Park Land, Open Space, or Lot devoted to pedestrian walkways, bike paths, and private roadways intended for common use. At the time each Lot is developed, or at such earlier time as may be determined by YGAF, Inc. or the developer of the Lot, YGAF, Inc. or the developer shall also grant a non-exclusive easement for vehicular ingress and egress for the benefit of all developers and property owners and their tenants, contractors, employees, agents, customers, licensees, invitees, successors, and assigns over and across the private roadways of The East 80 at Cardwell Ranch intended for common use.

**ARTICLE X - ENFORCEMENT**

A. Statement of Purpose. The parties acknowledge that from time to time disputes may arise involving the City, YGAF, Inc., property owners, the Association, or other persons bound by this Agreement. In order to minimize the financial and emotional costs that such disputes may exact from the participants, the parties to this Agreement, on behalf of themselves and their successors and assigns hereby commit themselves to work together in a spirit of cooperation to facilitate the prompt resolution of such disputes in a manner that respects and promotes relationships between the parties and without resort to litigation as much as possible.

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

C. Right to Enforce by Property Owners and the Association. 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 East 80 at Cardwell Ranch and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as future property owners within The East 80 at Cardwell Ranch. The parties further agree that the Association shall have standing to enforce the terms of this Agreement relative to the City or any property owner or other property owners' association regardless of whether the Association owns property in The East 80 at Cardwell Ranch. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

D. Right of Abatement and Suit. If at any time YGAF, Inc., the City, or the Association objects ("the objecting party") to any property owner's or other party's breach of



its obligations under 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 its 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 reasonable period, the objecting party may perform whatever reasonable maintenance, repair, operation, or other curative action is 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 obligations under this Agreement. The objecting party may also prosecute a proceeding at law or in equity against the defaulting party to enjoin a violation of the terms of this Agreement, to cause said violation to be remedied, or to recover damages for said violation.

**ARTICLE XI – AMENDMENTS AND VARIANCES**

A. Amendments or Changes. This Agreement may not be amended, modified, or terminated, in whole or in part, except with the unanimous written consent of YGAF, Inc. (or its assignee) and the City. The consent of landowners who purchase property within The East 80 at Cardwell Ranch shall not be required to amend, modify, or terminate this Agreement. Any modifications requested by YGAF, Inc. 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:

1. Change the overall character of the development;
2. Increase the number of residential units greater than two (2) percent;
3. Change additional allowed uses;
4. Reduce open space greater than two (2) percent; and
5. Change the approved minimum setbacks, maximum lot coverage, or maximum allowed structure height.

B. Variance Procedures. Variance procedures shall comply with the Unified Zoning Regulations as established by the City of Billings. In no case shall a variance be granted for a use not consistent with those listed within this Agreement or for uses prohibited within the Unified Zoning Regulations. Upon receiving written consent of YGAF, Inc., property owners may apply for a variance from the following required special building features:



1. Increase in the maximum allowed height under Article VI.C.3 of any structure in any planning area from 34 feet to 45 feet.

2. In accordance with Article VI.C.6, increase in the maximum diameter of satellite dishes from 24 inches up to 96 inches.

Covenants or private agreements may also require that an applicant obtain the written consent of YGAF, Inc. for other variances.

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

**ARTICLE XII - ARBITRATION**

A. Agreement to Arbitrate. Except as otherwise provided in this Agreement and subject to the provisions of the next paragraph below, all property owners and the City agree, upon receipt of written request by any party to the dispute, to submit to binding arbitration any and all claims, disputes, and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents) whether in tort, contract, or otherwise arising out of or relating to in any way this Agreement. YGAF, Inc. may, in its sole and exclusive discretion, elect not to participate in arbitration requested by another party, in which case the dispute shall be resolved by means not involving arbitration.

B. Other Remedies. Nothing in the preceding paragraph, nor the exercise of any right to arbitrate thereunder, shall limit the right of any party hereto to: (1) exercise abatement or other self-help remedies, (2) obtain provisional or ancillary judicial remedies such as injunctive relief, or (3) impose fines as permitted by law before, during, or after the pendency of any arbitration proceeding. The authority of the City to levy and impose fines shall not be limited by this arbitration agreement. The institution and maintenance of any action for such judicial relief, the pursuit of provisional or ancillary remedies, or the exercise of self-help remedies shall not constitute a waiver of the right or obligation of any party to submit any claim or dispute to arbitration, including those claims or disputes arising from or related to those addressed as part of the exercise of any such judicial relief, pursuit of provisional or ancillary remedies, or exercise of self-help remedies.

C. Arbitration Procedure. Any arbitration proceeding shall proceed in Billings, Montana, and shall be governed by the Montana Uniform Arbitration Act and all applicable Montana statutes of limitation, and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any arbitration proceeding shall be before a single arbitrator selected according to the Commercial Arbitration Rules of the AAA. The arbitrator shall decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions that are substantially similar to pre-hearing motions to dismiss for failure to state a claim or motions for summary adjudication. Discovery shall be permitted, but shall be subject to scheduling by the arbitrator, and any discovery disputes shall be subject to final determination by the arbitrator. The arbitrator shall award costs and expenses of the arbitration proceeding in accordance with this Agreement. Judgment upon any award rendered by the arbitrator may be entered in



any court having jurisdiction.

**ARTICLE XIII - GENERAL PROVISIONS**

A. Appointment of Agent. YGAF, Inc. may, in its sole and exclusive discretion, hire, appoint, or designate an individual or entity to act as its agent to fulfill the duties and obligations of YGAF, Inc. hereunder. Although not required to be effective, notice of such appointment may be made in writing and recorded in the real estate records of Yellowstone County, Montana, and shall contain the legal description for The East 80 at Cardwell Ranch, or any portion thereof, affected by the appointment. Notice of appointment shall also be provided to the City at the address specified herein. YGAF, Inc. may, in its sole and exclusive discretion, revoke an agent's appointment or make an additional appointment at any time.

B. Assignment by YGAF, Inc. YGAF, Inc. may, in its sole and exclusive discretion, assign its rights and delegate its duties arising 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 East 80 at Cardwell Ranch, 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, YGAF, Inc. 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.

C. Neutral Interpretation. YGAF, Inc. and the City hereby stipulate and agree that this Agreement has been prepared and negotiated by both parties and shall be construed using neutral interpretation, and that this Agreement shall not be construed in favor of any party or against any party based on authorship.

D. Coordination with Other Regulations. In the event that there is any conflict between this Agreement and other zoning regulations or ordinances, including the Unified Zoning Regulations, the terms and conditions of this Agreement shall govern. If this Agreement does not prescribe rules for a particular aspect of the development or use of The East 80 at Cardwell Ranch either by its 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 version of such regulations or ordinances shall likewise continue to be applicable to the property to the extent that they are not inconsistent with this Agreement.

E. 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 thereof 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 receipt therefore. All notices or demands to YGAF, Inc. or the City shall be



given at the following addresses or such other addresses as YGAF, Inc. or the City may from time to time designate by written notice given to the other party as hereinabove required.

If to YGAF, Inc.: Peter Yegen III  
P. O. Box 959  
Billings, MT 59101

With copies to: William A. Cole  
Cole Law Firm, PLLC  
3860 Avenue B, Suite C West  
Billings, MT 59102-7550

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

With Copies to: City-County Planning Department  
510 N. Broadway, 4<sup>th</sup> Floor Parnly Library  
Billings, MT 59101

City Attorney's Office  
P.O. Box 1178  
Billings, MT 59103-1178

F. 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.

G. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

H. Limitation on Enforcement. This Agreement is for the benefit of YGAF, Inc., the City, the property owners within The East 80 at Cardwell Ranch, the Association, and their heirs, devisees, assigns, and 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 restrictions contained herein, judicially or otherwise.

I. 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 substitute therefore, governmental restrictions, terrorist acts, governmental regulations, governmental controls, enemy or hostile government 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.



J. Attorneys' Fees and Costs. In the event either party shall file any proceeding, whether at law or in equity or in arbitration, the prevailing party shall be entitled to receive reimbursement of reasonable outside attorney's fees and court or arbitration costs, if any, from the other party.

K. Severability. Should any provision of this Agreement be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Agreement, and the remaining provisions shall remain in force and be binding upon the parties hereto as though such invalid, void, illegal or unenforceable provision had not been included.

L. No Partnership. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

M. Entire Agreement. This Agreement contains the entire agreement between the parties hereto 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.

N. Construction. In construing the provisions of this Agreement, whenever the context has required, the use of a gender shall include all other genders, and the use of the singular shall include the plural, and the use of the plural shall include the singular.

O. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

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

#### NOTICE

**THIS AGREEMENT SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN THE EAST 80 AT CARDWELL RANCH, OF THE EXPRESS RESTRICTIONS PLACED UPON THE PROPERTY WITHIN THE EAST 80 AT CARDWELL RANCH, 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.**

Q. Run with the Land. The duties created by this Agreement shall run with the land and shall be binding upon YGAF, Inc., the City, the property owners, and their heirs, successors, and assigns.

R. Contact Person. YGAF, Inc. hereby designates a contact person whom may be contacted with respect to any questions, comments, or concerns. The contact person shall



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be Charles Yegen, P. O. Box 959, Billings, Montana 59101.

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

**YEGEN GRAND AVENUE FARM, INC.:**

YEGEN GRAND AVENUE FARM, INC.

By: *[Signature]*  
Peter Yegen III  
Its: President

**CITY:**

CITY OF BILLINGS



By: *[Signature]*  
Ron Tussing  
Its: Mayor

By: *[Signature]*  
Cari Martin  
Its: City Clerk

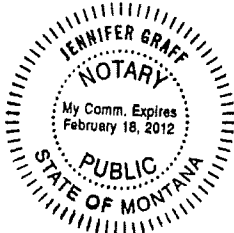


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STATE OF Montana )  
 )ss.  
County of Yellowstone. )

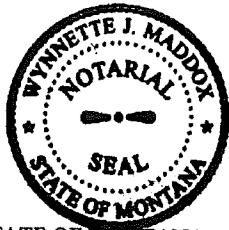
This instrument was acknowledged before me on the 23<sup>rd</sup> day of October, 2008, by Peter Yosen III known to me to be Resident of YGAF, Inc. Yegen Grand Avenue Farm, etc.



Jennifer Graff  
[signature]  
Jennifer Graff  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: Billings, Montana  
My Commission Expires: February 18, 2012

STATE OF MONTANA )  
 )ss.  
County of Yellowstone )

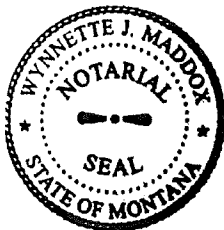
This instrument was acknowledged before me on the 14<sup>th</sup> day of October, 2008, by Ron Tussing, known by me to be the Mayor of the City of Billings.



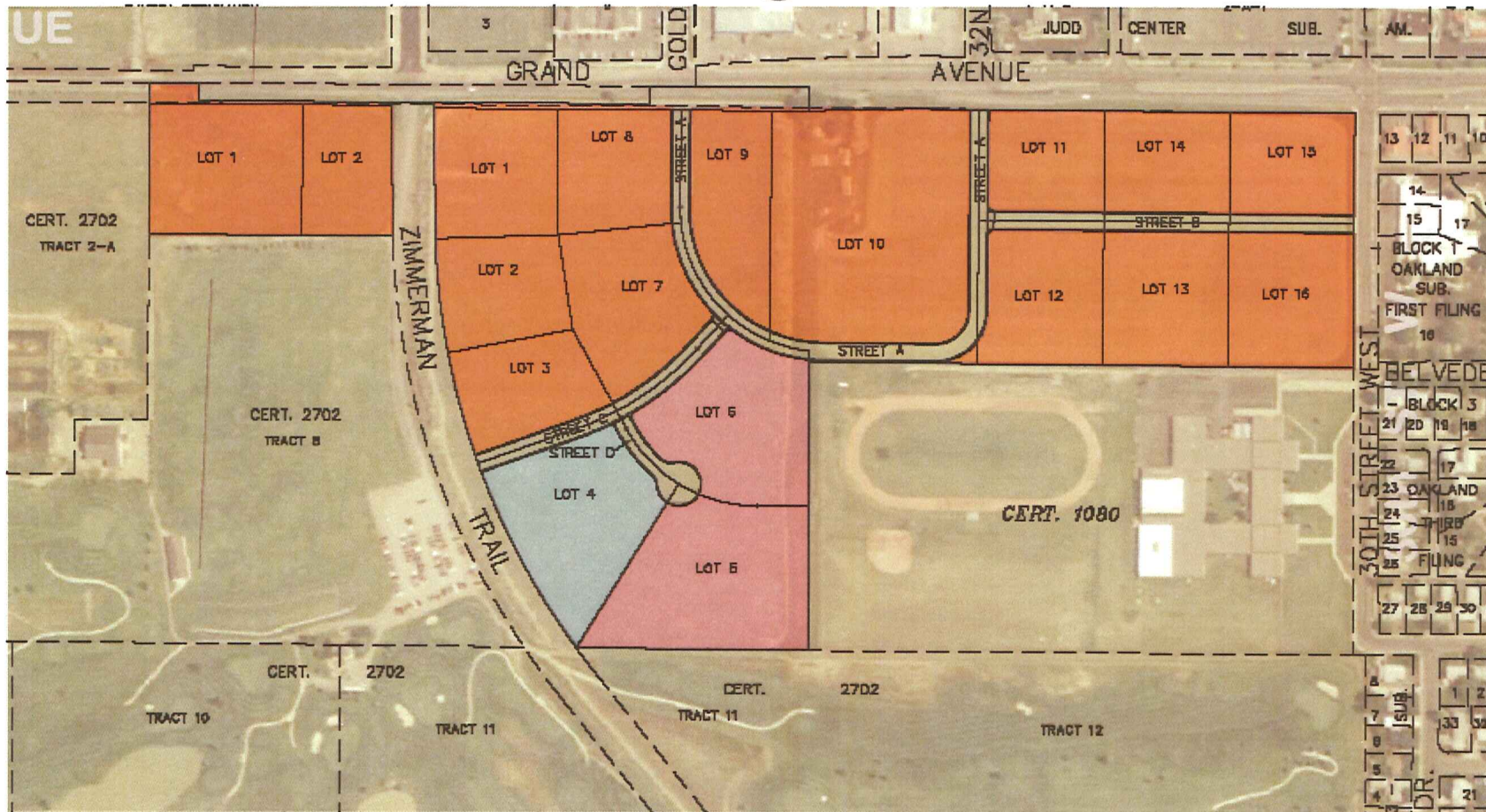
Wynnette J Maddox  
[signature]  
Wynnette J Maddox  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: Shepherd, Montana  
My Commission Expires: 9.16, 2010

STATE OF MONTANA )  
 )ss.  
County of Yellowstone )

This instrument was acknowledged before me on the 14<sup>th</sup> day of October, 2008, by Cari Martin, known by me to be the City Clerk of the City of Billings.



Wynnette J Maddox  
[signature]  
Wynnette J Maddox  
[typed/printed name]  
Notary Public for the State of Montana  
Residing at: Shepherd, Montana  
My Commission Expires: 9.16, 2010



 Planning Area 1 (Commercial)

 Planning Area 2 (Commercial or Multifamily)

 Planning Area 3 (Multifamily)

