

# DECLARATION OF RESTRICTIONS

## VINTAGE ESTATES SUBDIVISION

This **DECLARATION**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by **VINTAGE ESTATES SUBDIVISION, L.L.C.** with its principal office in Billings, Yellowstone County, Montana (hereinafter referred to as "Declarant").

### WITNESSETH:

**WHEREAS**, the undersigned is the owner of all of the lots in the Vintage Estates Subdivision, First Filing and

**WHEREAS**, the above- described property is being developed pursuant to that certain Subdivision Improvements Agreement dated \_\_\_\_\_, 2005 (The "SIA"), between Declarants and the City of Billings, Montana; and

**WHEREAS**, the aforesaid owner desires to place building and use restrictions on all of the lots within said Subdivision for the use and benefit of the presents and future owners of any of said lots.

**NOW, THEREFORE**, in consideration of the premises, the undersigned hereby establishes and declares the following building restrictions and protective covenants which shall be applicable to all the hereinafter described real estate.

### I.

#### PERSONS BOUND BY THE COVENANTS AND RESTRICTIONS

All persons, corporations, partnerships, associations, or other entities who shall hereafter acquire any interest in and to the real estate described herein, or any part thereof, shall be taken and held to agree and covenant with the owners of the lots and with their heirs, devisees, trustees, and assigns, to conform to and observe the following Covenants and Restrictions as to the use thereof, and the construction of residences and improvements thereon.

### II.

#### REAL ESTATE TO WHICH COVENANTS APPLY

These Covenants and Restrictions shall apply to the following described lots and blocks in the Vintage Estates Subdivision, First File (the "Subdivision"):

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Lots 1,2,3,4,5,6,7,8,9,10, BLK 1    Lots 1,2,3,4,5,6,7,8,9, BLK 2  
Lots 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16, BLK 3    Lot 1,2,3,4,5,6,7, BLK 4

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### **III. BUILDING AND USE RESTRICTIONS**

Each lot in the above-described Subdivision shall be known and described as a residential lot. None of the said lots may be used or improved for other than private residential purposes and no structure shall be erected, altered, placed, or permitted to remain on any residential lot other than one single-family dwelling with a private attached or semi-attached garage or carport.

No building or other structures shall be located on any lot less than 20 feet from the front lot line nor shall any building or other structure be located less than 8 feet from the side lot line or less than 20 feet from the rear lot line, but the side lot line shall be considered the outer property line when the structure encompasses more than one lot.

The ground floor or main floor minimum living area of all ranch-style dwellings erected on the lots, exclusive of open porches, breezeways, and garages, shall contain not less than 1,900 square feet (without basement) or 1,650 square feet (with full basement). Two-story dwellings exclusive of open porches, breezeways, and garages, with a minimum of 1,800 square feet of a total finished living area above ground level. Tri-level dwellings shall contain not less than 1,650 square feet of living area on the upper two levels, exclusive of open porches, breezeways, and garage, with a minimum of 2,300 square feet of livable area.

No lot shall be subdivided, resubdivided, split, altered, or reduced in size in any way or manner whatsoever. The foregoing shall not prohibit an adjustment or relocation of common boundary lines between two or more of said lots, provided that (i) no additional tracts or lots are created in connection therewith; and, (ii) each such tract or lot affected by such adjustment or relocation has an area (in square feet) equal to a least 90 percent of the area contained in such tract or lot as set forth and depicted on the original plat of Vintage Estates Subdivision, First File.

Lot aggregations shall also be allowed such that the net result is a reduction in total number of lots, and that no resulting lot of said aggregation has an area less than any of the affected lot areas prior to said aggregation.

No building of any kind shall be moved upon said premises, and all buildings or residences erected on said lots shall be new construction. Storage or detached buildings shall be of the same exterior materials and finishes as the residence and shall be no higher than 25 feet or the height of the residence whichever is less. No log homes or homes with log siding shall be allowed. No modular homes shall be allowed. All homes must be constructed with a two stalls or larger garage.

None of the above described property or any buildings erected thereon, shall at any time be used for purposes of any trade or for any commercial, professional or manufacturing business of any description, and no noxious or offensive activities shall be carried on, nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood. No hospital, church, duplex, or apartment house shall be erected on said lots. This provision shall prohibit the construction of a multi-family dwelling of the condominium type.

Nothing in this paragraph or in the Declaration shall be deemed to preclude the use of a portion of any building or residence erected on a lot as a home office provided that such use complies in all respects with the definitions, restrictions, and requirements for a "home occupation" in a residential district under the City Zoning Ordinance for the City of Billings, Montana, as the same may be amended from time to time.

No trailer, mobile home, motor home, basement, tent, shack, garage, or barn on the lots shall at any time be used as a residence, temporarily or permanently.

No dogs or pets shall be raised, kept, or cared for on a commercial basis and no swine, poultry, goats, horse, or other livestock (including chickens) shall be permitted upon said premises. Any person who shall keep, feed, harbor, suffer, or allow staying about the premises occupied or controlled by him within the Subdivision a dog at large or insecurely confined is guilty of maintaining a public nuisance.

No fence living hedge or wall of any kind shall be created or placed on the front or side of the front yard setback area of any lot.

No signs, billboards, posters, or advertising devices of any kind or character shall be erected or displayed upon any of the lots except signs displayed to identify the occupants of a dwelling sale or resale signs shall which shall not exceed 30 square feet in area.

Off-street covered parking shall be provided on each lot for all automobiles kept upon the premises. No Street or other open areas shall be used for the purpose of dismantling or repair of vehicles and only motor-driven vehicles capable of being moved under their own power may be parked upon said streets for a maximum of 30 days. Unregistered or inoperable vehicles must be parked in an enclosed garage.

No trailer, boat, camper, motor home, vehicle, or other equipment generally associated with recreation or leisure time activities shall be situated on or parked on any lots for more than 7 consecutive days in any calendar year unless parked on a concrete slab next to the house.

No structure on any lot may be used for dwellings purposes until after its area, as defined by foundations, shall have been completely enclosed according to plan, and until it has been substantially completed and until sanitary facilities and utilities shall have been permanently installed.

No excavation, except such as are necessary for the construction of improvements, shall be permitted on any lot until such time as the actual construction of the house is to begin except that the owner may test the supply of the water under said land and may drill and excavate for those purposes, as well as testing for subsoil conditions, or planting of trees and shrubs.

All garbage shall be kept within building enclosures or recessed in the ground. The burning of garbage and trash in incinerators or barrels is prohibited.

Any and all utilities which shall serve the said lands or lots, as now located or to be located thereon, shall be underground, extending to and including the distribution system, together with the residential and any and all service connections, with the exception of temporary new construction power services.

All fence products must be vinyl

Basketball boards must be supported on a separate post and be of manufactured quality. No homemade boards will be allowed.

Above ground swimming pools will not be permitted with the exception of children's wading pools.

No permanent clotheslines posts will be erected on any of said lots. Any clotheslines posts must be of the removable type.

Television or communication towers or structures shall not extend in excess of 3 feet above the building or roofline.

An Architectural Control Committee shall be formed at the time of filing of the Subdivision Plat. Said committee shall be composed of two individuals, one each representing (i) KW Signature Homes, Inc.; and (ii) Dan Lowe Construction, Inc.

In the event of the death or resignation of any member or members of the committee, the remaining committee members shall have full authority to designate a successor or successors. Members of the committee shall not be entitled to any compensation for services performed pursuant to the duties outlined herein.

All construction plans for structures to be erected within the Subdivision shall be submitted by the lot owners or his/her representative to the Architectural Control Committee for review and approval or disapproval as relating to the conformance of said plans to the intent of these restrictions.

The Architectural Control Committees approval or disapproval as required herein shall be in writing. In the event the Committee fails to approve or disapprove within 30 days after plans and specifications have been submitted to it in writing, or in any event, if no suite to enjoin the construction has been commenced prior to the completion thereof,

approval will not be required and the related requirements outlined herein shall be deemed to have been fully complied with.

Approval or disapproval of plans and specifications shall be by simple majority vote of the Architectural Control Committee.

#### **IV. DURATION**

These Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 30 years from the date the Covenants and restrictions are recorded, after which time said Covenants and Restrictions shall be automatically extended for successive periods of 10 years unless and instrument signed by a majority of the them owners of the lots has been recorded agreeing to change said Covenants and Restrictions in whole or in part. Invalidation of any on of these Covenants by judgments or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

#### **V. RIGHT TO ENFORCE**

The Covenants and Restrictions herein set forth shall run with the load and bind present owners, their heirs, devisees, trustees, and assigns, and any and all other parties claiming by, through, or under them, shall be taken to hold, agree and covenant with the owners of said lots, their heirs, devisees, trustees and assigns, and with each of the owners of said lots, to conform to and observe said Covenants and Restrictions as to the use of said lots and the construction of improvements thereon: but, no Covenants or Restrictions herein set forth shall be personally binding upon any person or persons, corporation, partnership, association, or other entity, except in respect to breach which is committed during its, his, or their seizing of , or title to said land; and the owner or owners of any of the above lands shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of the Covenants and Restrictions above set forth, in addition to ordinary legal action for damages; and the failure of the present owners, or the owner or owners of any lot to enforce the Covenants and Restrictions herein set forth at the time of any violation thereof, shall be in no event deemed as a waiver to the right to do so. In the event of any legal action to enforce this Declaration or to prevent a breach of the terms and conditions hereof, the prevailing party in such action shall be entitled to recover costs and fees, including reasonable attorney's fees.

**VI.  
AMENDMENTS**

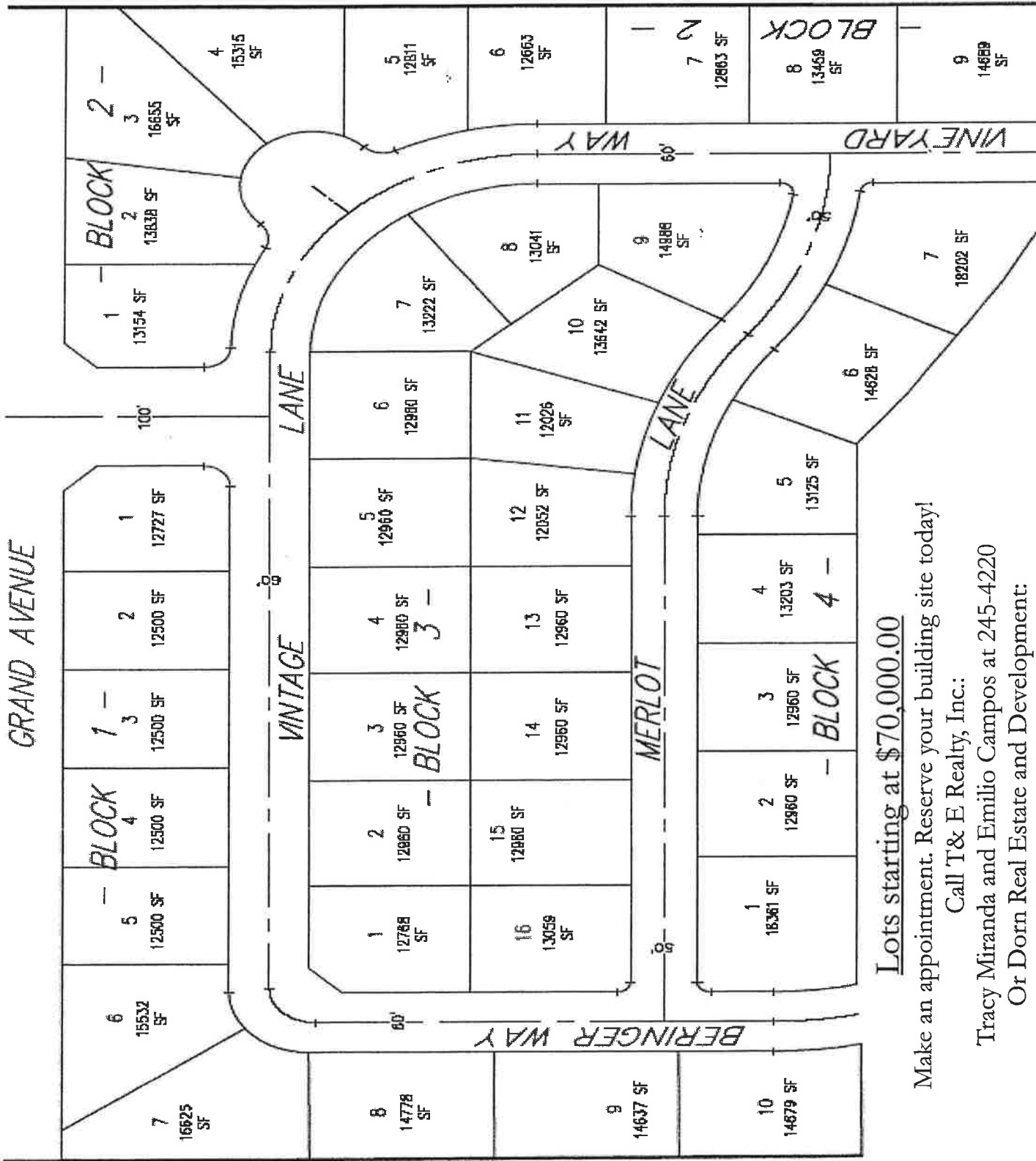
The above Covenants and Restrictions may be altered or amended at any time upon the placing of record at the office of the County Clerk and Recorder of Yellowstone County, Montana, of an instrument showing the written consent thereto by the owners of at least 60 percent of the above-described lots. Notwithstanding the foregoing, sentence, so long as Declarant owns at least 20 percent of the lots in Vintage Estates Subdivision, First File, then the consent of Declarant shall be required before these Covenants and Restrictions may be altered or amended, but such consent may be considered in the calculation and determination of the said 60 percent minimum consent requirement.

**IN WITNESS WHEREOF**, this instrument has been executed the day and year first above written.

VINTAGE ESTATES SUBDIVISION L.L.C.

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