



Commercial Builder Agreement and Guidelines of Price Hills Residential HOA and The Village at Elk Ridge Major Subdivision

This Builder Agreement (this “**Agreement**”) is made as of the Effective Date below between The Price Hills Residential Homeowner’s Association, Inc., a Montana non-profit corporation (the “**Association**”) and Builder, who will construct certain improvements on the Property. The Property is located within The Elk Ridge Major Subdivision of Three Forks, Broadwater County, Montana (the “**Development**”).

NOW THEREFORE, the Builder and the Association hereby agree as follows:

Information: Builder has provided certain information to the Association, which information is attached heretofore as **Exhibit “A”**. Builder hereby certifies that such information is true and correct. Builder agrees to provide additional information to the Association regarding Builder as maybe requested by the Association.

Restrictions and Guidelines: The Builder hereby acknowledges and agrees that the Property is subject to the terms and provisions of that certain Declaration of Commercial Covenants, Conditions, Easements and Restrictions for The Village at Elk Ridge Subdivision, recorded at Broadwater County, Montana, and any amendments thereto, or supplements or protective covenants filed in accordance therewith (collectively, the “**Restrictions**”). The Builder, while performing any activity in the Development or on the Property, is required to comply with the Restrictions, including, but not limited to, all covenants, architectural restrictions, and deadlines for completing construction. Builder acknowledges that violation of the terms and provisions of the Restrictions by the Builder or its sub- contractors may result in fines and penalties charged against the Builder or may result in the sub-contractor being denied access to the Development. No construction may commence on any proposed improvements until the Architectural Design Committee (the “**ADC**”) has issued an Approved Application.

Construction Rules: The Builder acknowledges and agrees that the Builder and its sub-contractors must comply with the construction rules attached hereto as Exhibit “**B**” (the “**Construction Rules**”). The Builder, while performing any activity in the Development or on the Property, is required to comply with the Construction Rules. Builder acknowledges that violation of the Construction Rules by the Builder or its sub-contractors may result in fines and penalties charged against the Builder or may result in the sub-contractor being denied access to the Development. The Association may inspect the Property to assure compliance with all rules. The Association and Builder will make a reasonable effort to schedule a time when both can meet at the Property. In the case of an emergency, the Association may inspect or otherwise enter the Property immediately.

Performance Deposit: The Performance Deposit is paid to the Association as security against violation of the Restrictions, the Construction Rules, or any damage caused to the Association’s common areas, streets, or other property in the Development. The ADC or the Association may increase the Performance

Deposit in the event the ADC or the Association in their sole discretion determine that the amount is insufficient to secure compliance with the Restrictions or the Construction Rules, or to protect the Development from damage caused or occasioned by construction of the proposed improvements. The determination to increase the Performance Deposit may be based on prior violations by the Builder of the Restrictions, any other rules promulgated by the Association or the ADC, the experience or lack of experience of the Builder within the Development, or the nature of the construction methods associated with the proposed improvements, among other similar factors.

In the event the ADC or the Association determines that the Builder has violated the Restrictions, the Construction Rules, or has otherwise caused damage to the Association's common areas, streets, or other property in the Development, the ADC from time to time, and without prejudice to any other remedy, may use the Performance Deposit to discharge any fines or penalties imposed by the Association or the ADC as a result of such violation, or repair any damage caused to the Association's common areas, streets, or other property in the Development. If the balance of the Performance Deposit reaches \$500 or less as a result of such application, the Builder, upon request of the Association, shall immediately cease all work on the property and deposit the amount necessary to restore the original balance of the Performance Deposit. Upon completion of the proposed improvements and a final ADC inspection, the Performance Deposit or any balance remaining will be refunded upon request of the Builder. No interest shall be payable upon the Performance Deposit.

Insurance: The Builder will obtain and maintain, at its sole cost and expense, commercial general liability insurance in an amount not less than \$1,000,000.00, with an insurance company licensed to do business in Montana. The Association shall be added as an additional insured on such policy. The Builder will be required to procure workers compensation insurance to the extent required by applicable law. A copy of such policies or duly executed certificates of insurance shall be provided to the Association for review and approval prior to the Builder commencing any work on the Property. The Association may also request a copy of the policy during construction upon request to the Builder. The Builder or its subcontractors, as the case may be, shall also maintain builder's risk insurance, workers' compensation insurance if required by Montana law, and premises liability insurance until construction is complete.

Indemnification: Builder agrees to indemnify, reimburse, and defend the Association and its members and directors for any and all damages, injuries, claims, or other losses arising during or relating to construction that are not covered by Homeowner's existing insurance policies or the Performance Deposit, including, but not limited to, any injuries, death, breakage of water lines, road damage, damage to common areas, and damage to any other subdivision or Association property.

Subrogation: The Builder releases the Association, its Members, employees, agents, customers, invitees, and licensees from any and all liability for any loss, damage, or injury to person or property occurring in, on about, or to the Property or personal property located thereon by reason of any construction or other casualty which could be insured against under a standard general liability insurance policy, and agree that such insurance carried by the Builder, either under its general liability insurance policy or other insurance policies, shall contain a clause whereby the insurer waives its right of subrogation against the Association, provided such insurance is available. Because the provisions of this section are intended to preclude the assignment of any claim mentioned herein by way of subrogation or



otherwise to an insurer, the Builder shall provide to any insurance company which has issued to it one or more policies of any and all risk coverage insurance notice of the provisions of this section and have such insurance policies properly endorsed, if necessary, to prevent the invalidation insurance by reason of the provisions of this section.

Assignment The rights of the Builder under this Agreement are not assignable without the prior written consent of the Association, which consent may be granted or withheld at the Association’s sole discretion.

Governing Law THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED, AND INTERPRETED IN ADCORDANCE WITH THE LAWS OF THE STATE OF MONTANA, AND THE OBLIGATIONS OF THE PARTIES HERETO ARE AND SHALL BE PERFORMABLE IN THE COUNTY WHEREIN THE PROPERTY IS LOCATED.

No Oral Modification This Agreement may not be supplemented, modified, or amended, except by an agreement in writing signed by both the Association and Builder. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

Partial Invalidity If any clause or provision of this Agreement is or should ever be held to be illegal, invalid, or unenforceable under any present or future law applicable to the terms hereof, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and that in lieu of each such clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

Counterpart Execution To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of all persons required to bind any party appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

EXECUTED to be effective as of the date first set forth:

Builder: _____
Print Name: _____
Print Title: _____
Date: _____



EXHIBIT A

Builder INFORMATION

Builder Name: _____

Builder Address: _____

Builder Home Phone: _____

Builder Cell Phone: _____

Builder Fax: _____

Location of Property: _____

Other lots within The Village at Elk Ridge that Builder has constructed:

Have other businesses been constructed in The Village at Elk Ridge by Builder using the same or similar elevation and/or floor plan? _____ Yes _____ No

If yes, please list: _____

Builder References: _____

Builder Insurance Agent: _____

EXHIBIT B

CONSTRUCTION RULES

UNDER NO CIRCUMSTANCES SHALL SITE CLEARING COMMENCE PRIOR TO THE ISSUANCE OF AN APPROVED ARCHITECTURAL DESIGN APPLICATION BY THE ADC UNLESS PRIOR WRITTEN APPROVAL HAS BEEN OBTAINED FROM THE ADC.

All commercial facilities must be built in strict accordance with the plans approved by the ADC and in accordance with then current County of Broadwater Codes. Changes to the approved plans must be submitted to and approved by the ADC before proceeding.

Heavy equipment operation and other loud noise from construction shall be prohibited between: 7:30 pm and 6:30 am.

All construction sites shall always be kept free and clear of litter and construction debris.

A portable chemical toilet and construction dumpster (or alternate approved by the ADC) is required to be on site prior to site clearing. Both shall be as far as possible from the street and neighboring commercial facilities and the doors of the toilet shall be placed facing the lot interior. Lot owners are responsible for always providing adequate sanitary facilities for their construction workers on each commercial site. Portable toilets may not be shared between job sites.

Each commercial site must have a clearly defined construction access which must not encroach on protected site features, other lots, Price Road, or any unauthorized access. Lot owners must take steps to stabilize this access prior to construction to control dust, mud, and erosion.

The Builder agrees to make reasonable effort to control dust from the construction site. Builders should use cover materials or provide sufficient irrigation to eliminate any fugitive dust, to include an enclosed rock cutting station or use of a wet saw when cutting rock.

All construction personnel shall park on the lot they are building on and not on the roadway or anywhere that will obstruct traffic. Enough space must always be maintained on the roadways for emergency vehicle access. No parking is permitted at any time on Rolling Prairie Way.

Construction crews may not park on, drive through, or otherwise use neighboring commercial sites, lots, or common areas unless they have written permission from the owner or the Association.

Construction vehicles or equipment may be kept overnight on lot during times of construction. Overnight parking on any street is only permitted with the express permission of the Association.



All construction personnel shall adhere to speed limits of 20 m.p.h. inside the subdivisions. Violators will be issued two warnings. In the event of a third violation, violators will be denied entry for a period of three months.

Consumption of alcoholic beverages or the use of a controlled substance by construction personnel is strictly prohibited.

Playing of loud music by construction personnel is strictly prohibited. The use of radios or other audio equipment must not be audible beyond the property perimeter of any commercial site in The Village at Elk Ridge.

The possession or discharge of any type of firearm by construction personnel anywhere on The Village at Elk Ridge property is prohibited. The Association hereby disclaims all liability from any harm and/or injury, personal, economic, or otherwise, that may occur due to a violation of this policy.

All construction material shall be stored only on the lot where the commercial facility is being constructed. Use of adjacent properties for storage is prohibited without the express written approval of the property owner. A copy of such approval must be sent to the Association.

No dumping or burning is permitted within The Village at Elk Ridge. Violators will be prosecuted.

During excavation, filling or stockpiling of soils on a lot, care must be taken to prevent erosion or wash-off of the soil. Temporary soil retention structures may be required.

Concrete trucks may washout only in areas designated by the Builder within the boundaries of that lot. All concrete washout, from both trucks and portable mixers, must occur within the building envelope of the commercial site. Wash-out in road rights-of-way, setbacks, natural areas or on adjacent properties is strictly prohibited.

No one under the age of 16 years or pets shall be permitted at any construction site, except those children and/or pets of the Owner or the Owner's guests.

Except for signs erected or constructed by or on behalf of the Owner, no exterior advertising sign shall be permitted other than those identifying the name, business and products that the person or firm occupying the Commercial Lot and those offering a Commercial Lot for sale or for lease. No sign shall be larger than 10 feet tall by 20 feet wide, or as approved by the Declarant.

Changing of oil or discharge of any petrochemical substance is not allowed. Vehicles that leak oil must not be brought onto The Village at Elk Ridge property.



All building materials, equipment, and machinery required to construct a commercial facility on any commercial site at The Village at Elk Ridge must be delivered to and remain within the lot clear of all property lines. Material delivery vehicles may not drive across adjacent commercial sites or common areas to access a construction site or drop deliveries in a roadway right-of-way without specific approval from the ADC.

Builders shall clean up all refuse and debris daily. A commercial dumpster must always remain on site during active construction for the purpose of containing waste materials or packaging. Refuse containers must be emptied on a timely basis to avoid overflow of refuse. Builders are prohibited from dumping, burying, or burning refuse or brush anywhere on the commercial site or in The Village at Elk Ridge.

Lot owners shall insure that tall grass and noxious weeds are periodically cut during construction to maintain a good appearance and to minimize their spread through the development.

Dirt, mud, or debris resulting from activity or washout on each construction site must be removed daily from roadways.

All applicable OSHA regulations and guidelines must be always observed.

No on-site fires are allowed.

No pets, particularly dogs, may be brought onto the property by anyone other than the Builder. If the Builder brings a pet to the site, that animal must be properly contained within the commercial site.

The Builder will be held financially responsible for the cost of any damage, site restoration/revegetation or refuse/brush removal on all adjacent properties or roadway rights-of-way resulting from the trespass or negligence by their employees or subcontracted agents. Roads shall be left in new condition. Repairs and street sweeping will be the expense of the Builder.

Builder Signature

Date Signed