

After Recording Return To:  
Chris Johnson  
Worden Thane, PC  
321 W. Broadway, Ste. 300  
Missoula, MT 59802

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PAISLEY PARK SUBDIVISION

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This Declaration is made this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, by OO Land Holding, LLC, a Washington limited liability company registered to conduct business in Montana, of 16309 E. Marietta Ave., Spokane Valley, WA 99216 (Declarant herein), and provides as follows:

### **Recitals**

1. Declarant is the owner of certain real property located in Missoula County, Montana, which is described as follows:

Tract 5 and Tract 7 of Certificate of Survey No. 3176, located in the West one half of Section 12, Township 13N., Range 20W. P.M.M., Missoula County, Montana.

Which property is to be further divided and known as Paisley Park Subdivision, a platted subdivision located in the City of Missoula, Missoula County, Montana.

[Specific description of initial Phase Lot and Block designations]

The covenants, conditions, restrictions, and easements identified herein will apply to any and all subsequent phases of said plat, as such phases may be annexed into and under the provisions of this instrument; provided Declarant reserves the right to promulgate amended or additional covenants, conditions, restrictions, and easements for subsequent phases, as may be appropriate or otherwise required for governmental approval of such phases. Nothing herein precludes Declarant from developing in phases or in any particular order.

2. Declarant, and its successors and assigns, intends to cause to be constructed upon the Lots which constitute the Real Property described in Section 1 of these Recitals single family

and multifamily buildings, and which improvements may include commercial uses, as specified herein.

3. Declarant wishes to place restrictions, covenants and conditions upon Real Property described in Section 1 of these Recitals for the use and benefit of the property, its future Owners and the Declarant.

## **Declaration**

NOW THEREFORE, Declarant declares that all the Real Property described above shall be held, sold, and conveyed subject to the following restrictions, covenants, conditions, and easements, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Real Property.

**1. Definitions.** For the purposes of this Declaration, the following definitions shall apply.

a. **Association.** "Association" shall mean the Paisley Park Subdivision Owners Association, Inc., (or close variation of such name) to be incorporated by the Declarant as a Montana non-profit corporation, and its successors or assigns.

b. **Board of Directors.** "Board of Directors" shall mean the Board of Directors of the Association, appointed by Declarant as provided for herein, or duly elected pursuant to the Bylaws of the Association.

c. **Bylaws.** "Bylaws" shall mean the Bylaws adopted by the Association as amended from time to time.

d. **Common Areas.** Common areas are generally defined as any and all property located within the Subdivision that is not a Lot or property dedicated to a public body, and as is designated on the plat of Paisley Park Subdivision.

e. **Declarant.** "Declarant" shall mean OO Land Holdings, LLC, or its successors and assigns. The conveyance by deed of a single Lot or parcel, or a small number of Lots or parcels to a single purchaser, inclusive of for construction purposes, shall not be deemed a conveyance of any development or other rights retained by Declarant herein.

f. **Declaration.** "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of Paisley Park Subdivision, as may be amended from time to time, and as may be made applicable to future phases.

g. **Home.** "Home" may refer to a single family dwelling, or each separately habitable portion of a duplex, triplex, or rowhouse or townhome.

h. Lot. "Lot" shall mean any of the lots as depicted upon the recorded subdivision plat of the Real Property or as will be shown upon the recorded subdivision plat of future phases of the Real Property with the exception of streets and open areas dedicated to the public and/or common areas, common area roads and pathways, parking lots, or any other such feature as may be so designated as common on the plat of Paisley Park Subdivision.

i. Multifamily Housing. Multifamily housing shall include any and all habitable dwellings with multiple dwelling spaces or units but under a single ownership, and not designed to have individual ownership of individual dwelling spaces, with the exception of condominiums which may be included under this definition.

i. Owner. "Owner" shall mean the record owner of a fee, or undivided fee, whether one or more persons or entities, of any Lot, including buyers under a contract for deed, but excluding any person or entity who has sold or is selling any Lot under a contract for deed and those having an interest merely as security for the performance of an obligation.

j. Real Property. "Real Property" or "Property" shall mean the Real Property as described in Section 1 of the Recitals, inclusive of any successive divisions or phases of Paisley Park Subdivision..

## **2. Association.**

a. Organization of Association. The Declarant, before the sale of any Lots, shall incorporate the Association in the State of Montana. The Association shall be incorporated for the purposes of exercising the powers as described in this Declaration and those otherwise reasonable or necessary to carry out the functions of an owners association, including but not limited to the responsibility for maintaining, administering and enforcing the covenants, easements, conditions and restrictions set forth in this Declaration. The Association may also have and maintain ownership of and maintenance responsibility for any Common Area established and not otherwise dedicated or granted to a public body or entity. All Owners of Lots shall be members of the Association.

### **b. Membership & Voting Rights.**

i. Membership. Every person or entity who is an Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of the Lot. Ownership of a Lot shall be the sole qualification for membership.

ii. Consent to Membership. Acceptance of a deed, notice of purchaser's interest or other documentation evidencing an ownership interest in a Lot shall be deemed to be consent of that Lot's Owner to membership in the Association. The recording of a deed or other document evidencing an ownership interest shall be *prima facie* evidence of acceptance of that document by the receiver of the interest transferred.

iii. Voting Rights. The Association shall have one class of voting membership. Other than as provided in this Declaration, members shall be entitled to one vote for each Lot owned. Provided, for such time as the Declarant owns one or more Lots, the Declarant shall be entitled to five votes per each Lot it owns. When more than one person holds an interest in a Lot, the vote for such Lot shall be exercised as its co-owners determine, but in no event shall more than one vote be cast with respect to any Lot.

c. Directors. The affairs of the Association shall be managed by its Board of Directors. Up until the time Declarant determines the Association has sufficient membership and assessment base to administer its obligations hereunder (informally called 'transition'), the Board shall consist of those individuals appointed by the Declarant, provided such appointments shall only be for a year period (exclusive of renewals). Following the initial Board appointed by Declarant, the Board of Directors shall consist of three (3) individuals, all of whom shall be an owner of a Lot or the agent or representative of an owner, and said Board shall be elected at each annual meeting by the Members, as provided in the By-Laws. Board Member terms shall be three years, with each position staggered so that one Board Member is elected each year. Of the three positions the post-transition Board shall consist of one position initially for one year, one position initially for two years, and one position initially for three years. Until the transition event stated above, the Board shall consist of any number of persons appointed to that position by the Declarant. The Declarant may transition Director appointment authority earlier, in a written notice to the Association. Director obligation to manage the affairs of the Association does not preclude the Directors from retaining professional property management to manage the day to day affairs of the Association.

The Association, by and through its Board of Directors, shall have the power to convey any Common Area or portion of a common area to any governmental entity or political subdivision. The Board on behalf of the Association shall also have the power to receive a conveyance of any property interest from the above-referenced political entities, or any other individual or entity, and to hold such property interest as Common Area.

### **3. Obligations and Authority of Association.**

a. Association Authority. The Association shall carry out the obligations as established by and may exercise such authority as granted by this Declaration, including but not limited to the obligations and authority described below. Association maintenance obligations may also include maintenance of all Common Areas, if the same are established in the plat and are not dedicated to a public body. Provided, nothing herein shall prevent the Declarant or the Association from contracting with a private party or entity to perform any of the duties or obligations identified herein; provided further that such contract shall be in writing, and shall not otherwise relieve the Declarant or Association from its obligations or duties to Owners. The Association's entry onto any Lot to carry out its obligations under this Declaration shall not be deemed a trespass, provided the Association may not enter into the interior of any Home in the performance of its obligations without first giving its Owner twenty-four hours prior notice of such entry, except in the case of an emergency, in which case prior notice shall not be required.

b. Maintenance Obligations. The Association shall be responsible for the maintenance of access to Common Areas and trails, provided such access areas, Common Areas, and trails are not dedicated to a public body, all as may be shown on the plat (and successive phases) of Paisley Park Subdivision.

The Association shall also be responsible for the maintenance of improvements and amenities to and in Common Areas, which are anticipated to be developed as part of the Subdivision, inclusive of lawn and landscaped open space and trails located therein.

The Association shall also be responsible for the maintenance of such other common amenities as may exist for the benefit of Owners within the Subdivision, inclusive, by way of example and not as a limitation, of features such as mailbox cluster(s) or stormwater systems, whether located on Common Area or Lots.

Association maintenance obligations shall generally be performed by Declarant, until such time a sufficient number of Lots are sold and improved to allow assessment revenue as may be necessary to meet such maintenance obligations, at which time Declarant may transfer to the Association responsibility of such maintenance obligations. Such transfer of maintenance and payment/assessment obligations shall be by written notice by Declarant to the Association.

c. Ordinary Care. The Association in carrying out its obligations as set out in this Section, shall use ordinary care in the fulfilling of its maintenance obligations, and shall warn owners, and others whose presence upon the Real Property is foreseeable, of any hidden dangers that may be known to the Association due to its maintenance obligations. The Owners acknowledge and agree, for themselves, their families, guests and invitees, that snow and ice may accumulate in winter months, or other natural and unavoidable risks may arise, which the Association may not be able to mitigate against. Additionally, trails within the Subdivision, and access thereto, may be subject to natural conditions and hazards associated with its use for which the Association may not be able to mitigate against. As result, this Section does not obligate the Association to insure or warn the Owners, their families, guests and invitees, against all possible harm or damage arising from the use of such areas. For any undedicated Common Area or element that is open to use by the public, it is the express intent of the Association to be governed by the Montana gratuitous permittee statute.

d. Maintenance Occasioned through the Fault of an Owner. In the event any maintenance, repairs or replacements are required as a result of any intentional or negligent act or omission of any Owner, his or her guests or invitees, such Owner shall be individually assessed for the costs of such maintenance, repairs and replacement.

e. Maintenance Other than Regular Maintenance. The maintenance, repair and replacement to be provided by the Association, does not include maintenance, repair or replacement caused by events other than normal wear and tear. To the extent repair or maintenance is required, arising from causes other than ordinary wear and tear or through the fault of another Owner, the Owner of the Lot requiring said repair or replacement is responsible

for the cost and expense of the same.

f. Rules and Regulations. The Associations shall be authorized, either through its Board or through the Architectural Control Committee, to establish such rules and regulations as it deems appropriate for the Real Property, including such rules and regulations as deemed appropriate by the Association to facilitate its maintenance obligations under this Declaration. Such rules and regulations may include the use and hours of use of common areas.

g. Owner Maintenance.

i. Each Owner is responsible for the regular maintenance, repair and replacement of the exteriors of the Homes and Multifamily dwellings located on each Lot. Such exterior maintenance, repair and replacement shall include the maintenance of the siding, trim, windows, doors, roof, and exterior lighting, so as to present an attractive, well kept appearance of the exteriors, including but not necessarily limited to regular painting and staining of buildings and fences, and replacement of broken glass or fixtures.

ii. Each Owner is responsible for the maintenance, repair and replacement of the landscaping and lawns located in the yard areas of each Lot, and such lawn and landscaping maintenance shall include the landscaping of boulevard areas, between sidewalks and street, that are adjacent to a Lot. Boulevard maintenance shall at minimum meet City of Missoula requirements as specified in Municipal Code. Lawns and landscaping shall be installed on each Lot within nine months of completion of the Home for occupancy. Maintenance, repair and replacement shall include planting, watering, fertilizing, weeding, mowing, trimming of the lawn and all trees, shrubs, and plants so as to present an attractive, well kept appearance of the yard and boulevard areas. All landscaping shall have and continue a positive grade directing surface water away from the structure, and shall not interfere with designed drainage storage areas. Yard decorations and ornaments in excess of five feet in height shall require the approval of the Architectural Control Committee as to the compatibility with the well kept appearance of the Real Property intended by the Declarant.

iii. Each Owner is responsible for the maintenance, repair and replacement of the sidewalks and driveways located on each Lot. Such sidewalk, driveway and sidewalk maintenance, repair and replacement shall include cleaning and regular snow removal, so as to present an attractive, well kept appearance of the sidewalks and driveways and promote safety. Each Owner is further responsible for the maintenance, repair and replacement of the structural components of the decks and patios and keeping the same in a clean and tidy condition and perform snow removal associated with such decks.

**4. Architectural Control Committee.**

a. Architectural Control. The Association may establish an Architectural Control Committee to serve the functions as described in this Section. Members of the Architectural Control Committee shall be appointed and serve as set forth in the Bylaws of the Association,

except that the Declarant shall act as the Architectural Control Committee or have the authority to appoint members of the Architectural Control Committee, until such time as it no longer owns one or more Lots subject to this Declaration, unless such control by Declarant is sooner transferred in writing to the Association. Declarant may transition architectural control to the Association on a subdivision phase by phase basis. All authority of the Architectural Control Committee may be exercised by the Directors of the Association, in the absence of such committee.

b. Architectural Control Committee Review. The plans and specifications of all structures to be erected upon any Lot, including any modifications or alterations to the exteriors of structures, must first be approved by the Architectural Control Committee, after submission of those plans and specifications as required by the Architectural Control Committee. The Architectural Control Committee shall review all designs for structures and approve the same before construction may commence. The Architectural Control Committee may require payment of fees for application or review of proposed plans, including review of complaints or protests alleging violation of these covenants as to matters within its jurisdiction. The fees as set by the Architectural Control Committee shall be in an amount sufficient to reasonably compensate the Architectural Control Committee for its administrative costs and expenses likely to be incurred in connection with its activities, inclusive the retention of experts or professional guidance on an as-needed basis. The Architectural Control Committee may require payment of the fee in advance as a condition of making its review or determination. Unless waived in writing by the Architectural Control Committee, failure to pay any fee required for review or action shall be interpreted as the matter was not presented for review and no action of the Architectural Control Committee is required.

c. Architectural Control Committee Approval. Approval or disapproval by the Architectural Control Committee shall be in writing. In the event the Architectural Control Committee fails to act within sixty days after the proposed plans and specifications of any structure are submitted, no specific approval shall be required for such structure or exterior modification, and the Owner shall be deemed to have fully complied with all pertinent provisions of this Declaration.

## 5. Assessments.

a. Creation of Assessments. Each Owner hereby covenants and agrees to pay to the Association assessments, all such assessments to be fixed, established, and collected from time to time as hereinafter provided. Unless otherwise specified, any reference to assessments shall refer to all nature of assessments as provided for by this Declaration. All assessments, together with interest and costs of collection as herein provided, shall be a charge on the land and shall constitute a lien upon the Lot against which such assessment is made. Such lien shall be deemed perfected upon filing with the County Clerk and Recorder of Missoula County an account of the assessments due together with a correct description of the Lot to be charged with such lien. The lien shall continue in effect until all unpaid assessments, interest and costs of collection shall have been fully paid. (The priority of such lien shall be determined as of the time of filing with

the Clerk and Recorder, and it shall be deemed subordinate to all previously recorded or filed interests, and subordinate to any purchase money security interest.) Each Owner, by accepting a deed to his Lot designates any one of the directors or officers of the Association or its duly appointed manager as agent with full irrevocable power and right to record a notice of said lien in favor of the Association; a lien accruing hereunder shall be foreclosed in the same manner as provided by the laws of the State of Montana for foreclosure construction liens as contained in Montana Title 71, chapter 3, part 5, as now exists or may be hereinafter amended; provided the limitation period of such lien shall be that of mortgages. Each such assessment, together with interest and costs of collection as herein provided, shall also be the personal obligation of the Owner of such Lot at the time when such assessment became due. Delinquent personal obligations shall not pass to successors in title unless expressly assumed by them, but this shall in no way limit the effect of any lien created herein, which shall run with the land.

b. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of funding the duties and obligations of the Association, as described in this Declaration, along with the expense incurred in the administration and enforcement of this Declaration, the Articles of Incorporation and Bylaws of the Association.

c. Uniform Rate of Assessment. All assessments, other than assessments levied against a specific Lot, as provided in Section 5(d)(v), must be fixed at a uniform rate for all Lots, based on the square footage of a particular Lot and the number of habitable dwellings located thereon. Provided a different rate of assessment may be applied to Lots with Multifamily dwellings, but nonetheless taking into consideration the number of habitable dwellings or units on such Lots.

d. Types of Assessments. The assessments levied by the Association shall be used to provide funds consistent with the purposes of the Association. The assessments may include, but shall not be limited to, the following:

i. Regular Assessment. A regular assessment for administration of the Association, including, but not limited to maintenance costs, equipment, supplies, liability insurance, other insurances, other normal expenses and to provide funds for such other purposes as the Association may find necessary and consistent with its purposes, duties and obligations.

ii. Special Assessments. The Association may levy special assessments for the purpose of defraying in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of any capital improvement, including the necessary fixtures and personal property related thereto, or for such other capital improvements as are determined necessary or desirable. However, no special assessment in excess of \$\_\_\_\_ per Lot shall be levied which has not been approved by the affirmative vote of two-thirds of the votes of the Members who are voting in person or by proxy at a meeting duly called to consider such special assessment. No special assessment shall be established to cover a period in excess of five years.

iii. Emergency Assessments. The Board of Directors is authorized to levy

emergency assessments, which shall not exceed four times the amount of the annual, regular assessment. Emergency assessments shall be levied only to meet costs and expenses precipitated by an emergency causing damage or a change of condition that must be remedied promptly to insure a safe and adequate continuation of facilities or services.

iv. Legal Reserve and Compliance Assessments. In addition to the assessments herein provided, the Board of Directors may levy an assessment for the purpose of establishing a legal reserve fund for legal fees and costs to enforce this Declaration. Nothing herein shall be interpreted to preclude the Board of Directors from utilizing other funds for compliance purposes.

v. Lot Specific Assessment. In addition to the assessments herein provided, the Association, per the terms of this Declaration, may levy assessments (including charges or fines) attributable to one or more specific Lots. In the event the Association is responsible for any road and other access maintenance (inclusive of trails), such maintenance expense shall be a chargeable expense to all Owners. Such lot specific assessments shall be treated as assessments in all other regards, other than being specifically assessed against one or more specific Lots and becoming due in full upon notice to the Owner of the Lot against which assessed.

vi. RSID/SID. The individual Lot Owners, and not the Association, shall be responsible for the payment of all assessments levied by the City or County of Missoula, or other appropriate governmental entity against Lots within Paisley Park Subdivision.

e. Payment of Assessments. The assessments provided for herein shall be computed on a annual basis, commencing on the 1st day of January of each year and terminating on the 31st day of December of the same year. The assessments for any year shall become due and payable in advance on either a monthly, quarterly or annual basis, as may be determined by the Association, acting through its Board of Directors. The Board of Directors shall fix the amount of the assessment against each Lot for each assessment period of at least thirty days in advance of the due date specified herein and shall at that time, prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

f. Effect of Non-Payment of Assessment. If the assessments are not paid by midnight on the date when due, then such assessment shall become delinquent. If the assessment remains unpaid for thirty days after such due date, the assessment shall bear interest from the due date at the rate of 8% per annum. A lien for a delinquent assessment may not be filed until thirty days following the date the assessment became delinquent. The personal obligation of the then Owner to pay any assessment or interest shall not be affected by any conveyance or transfer of title to said Lot. The Association may bring an action at law against the Owner obligated to pay the same and/or to foreclose the assessment lien against his or her Lot, and there shall be added to the amount of such assessment the Association's costs of collecting the same for foreclosing the lien thereof, including reasonable attorneys' fees and costs of such action.

g. Certificate of Payment. The Directors or Secretary of the Association shall upon demand at any time furnish a certificate in writing signed by a director or officer of the Association setting forth whether the assessments on a specified Lot have been paid, provided this obligation may be assigned to a property manager. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. In addition, the Secretary of the Association shall maintain a roster of the Lots and the assessments due thereon.

h. Exempt Property. Any part of the Real Property dedicated to a public authority or agency and any Lots, common areas or parks acquired by the Association shall be exempt from the assessments created herein.

i. Declarant Owned Properties. Unimproved Lots owned by the Declarant may be assessed at a fractional rate of regular assessments, to be determined by Declarant, as may be desired or necessary to allow the Association to meet its obligations hereunder.

## **6. Easements.**

a. Maintenance Easement. The Owner of each Lot shall and does have a perpetual easement, and the same is hereby declared, created and granted, for maintenance, repair and replacement of his Lot and the improvements located upon it, over, across and upon the other Lots, but only as reasonably needed for such maintenance, repair and replacement. For the purposes of the maintenance, repair and replacement for which the Association is responsible, the Association, its agents, employees and subcontractors, shall have full right to use such easements as necessary to carry out the Association's responsibility.

b. Temporary Water Storage. As may be illustrated on the plat of the Real Property, or subsequently designed and installed, portions of the Real Property and specific Lots may be designated as areas for the collection of stormwater and are subject to an easement for temporary water storage from run off. Such storage may include or be designated for snow storage areas.

c. Utilities and Drainage Facilities. Easements for installation, maintenance, repair, and replacement of utilities and drainage facilities are reserved as shown on the recorded plat, and shall include any road dedicated to the public. Additionally, Declarant hereby declares, creates and grants a blanket easement across the Real Property for installation and maintenance of utilities and drainage facilities to the Association and Owners subject to the Declarant's or Association's prior consent to location and configuration. The Declarant and the Association retain the right to grant such additional easements for installation and maintenance of utilities and drainage facilities as Declarant or Association deem necessary. No building of any kind shall be erected, placed, or permitted to remain on such easements.

## **7. General Restrictions and Covenants.**

a. Alteration. Each Home and Multifamily Housing built and constructed on the

Lots will have gone through architectural review and approval pursuant to this Declaration. Therefore, to enhance and maintain these approved designs, no Owner shall make any change, modification, alteration or addition to the design, structure or color scheme of the dwelling's exterior without first obtaining the prior written consent of the Architectural Control Committee. The Declarant, the Association, or the Architectural Control Committee, may promulgate a list of pre-approved exterior colors.

b. Residential Use. No Lot shall be used except for residential purposes. No store, office, business, commercial or manufacturing enterprise, hospice, commercial medical care, or other non-residential use of any kind, or anything of the nature thereof, shall be carried on or conducted on any Lot. Provided, an Owner or occupant of a Lot may engage in business activities of the nature of a home office, so long as such activities take place entirely within the Home or Multifamily Housing located on the premises, so long as such use does not increase the flow of vehicular traffic on the Real Property, and so long as such use does not result in noise, disturbance, or in any way negatively impact the residential nature of the Real Property. No signage is allowed advertising such in-home office or business. Further provided, for a period of fifteen years from the date of this Declaration, the Declarant shall be permitted to maintain a sales office in either a model home or a specially constructed building, to be used to promote the development of the Real Property. Further provided, Declarant or the Association reserves the right to grant exceptions to the residential use requirement for specific Lots, provided such exception comports with applicable zoning, and such exceptions are for business uses that will serve the occupants of the Lots, and will enhance the neighborhood character of the Subdivision.

c. Design and Materials. No trailer, mobile home, tent, yurt, or other temporary structure may be used on a Lot for habitation, provided this provision does not preclude the use of construction trailers for office and storage purposes. No improvement may occupy more than one Lot, i.e. may not be located on the boundary of two Lots. No improvement shall be located on any Lot so as to violate setbacks as required by the City of Missoula. All structures shall be constructed primarily on site of new materials and must use a concrete foundation. Trailers, trailer homes, and modular homes are not permitted. Improvements shall otherwise comport with applicable zoning regarding height, setbacks, and parking. All habitable dwellings and dwelling spaces shall bear a house number of such size and location as to be clearly visible from the street, and in compliance with any fire district or city authority regulation as to the size and visibility of such numbering. Roofing materials and defensible space landscaping shall comport with the Wildland/Urban Interface standards attached hereto as Exhibit \_\_\_\_.

d. Grade of Lawn. All improvement on Lots shall be situated and have a finished lawn grade so as to have positive drainage away from the building and to produce slopes that generally conform with the existing land form and support the drainage plan for the subdivision.

e. Fences. Fencing shall be subject to architectural review and approval as provided for herein. The Declarant or the Association may promulgate additional fencing standards as part of architectural review. All fencing shall otherwise comply with the City of Missoula zoning and other ordinances, and shall be maintained in good condition by the Owners.

f. Outbuildings. Outbuildings are generally prohibited, unless part of the original architecture review and approval.

g. Subdivision Prohibited. No Lot shall be further subdivided, provided further divisions pursuant to the Montana Unit Ownership Act are permitted, so long as such action comports with applicable zoning and this Declaration.

h. Utilities and Lighting. All utility lines shall be underground. The Owner of each Lot shall pay all utility connecting costs and all utility costs for such Lot thereafter. All exterior lighting shall be subject to architectural review and approval, and shall generally be directed down from the lighting fixture and not allowed to shine on any adjacent property. Exterior lighting and architectural review shall otherwise comport with any City of Missoula standards.

i. Boundary Control Monuments. The Declarant has caused survey monuments to be placed on the corners of each Lot. It shall be the responsibility of the Owner of each Lot to provide for immediate professional replacement of any survey monuments that are removed or become lost or obliterated from his Lot.

j. Air Standards, Burning of Trash. There shall be no burning of yard refuse, leaves or trash. All Owners shall comply with paving and stove use regulations associated with the Missoula Air Stagnation Zone.

k. Animals and Pets. No animals or fowl, domestic or wild, except for a maximum of two dogs; or two cats; or one dog and one cat, shall reside on any Lot. Such permitted animals shall remain within the dwelling space of their owner, and shall be permitted outdoors, only when leashed and under the control of their owner, or enclosed in a fenced yard. Such animals or pets are not allowed to remain outdoors overnight. Other small domestic animals may be kept in terrariums or aquariums so long as such animals remain indoors at all times. All animals kept on any Lot shall be properly fed, watered, and sheltered from the elements in such a manner as shall be consistent with their good health. Each Owner or person responsible shall treat and care for such animals in a humane and merciful fashion, so that other persons in the area shall not be required to tolerate or condone inhumane treatment of the animals. Animal manure shall be immediately removed following its deposit upon the Real Property and properly disposed of, so as not to become obnoxious, offensive, or a nuisance. All carcasses of dead animals shall be removed immediately. No animals so kept may be commercially bred and no commercial sales of any animals shall be permitted.

l. Leasing of Property. Any leasing of a Home shall be for residential purposes, which for the purposes of this Declaration may include short term or vacation rentals. Declarant may further add to or amend the provisions regarding short term rentals, to either limit or allow as to specific Lots. Owners who lease to tenants shall be responsible for the tenant's compliance with the requirements of this Declaration.

m. Antennas. No exterior television or radio antennas, or satellite or microwave

dishes larger than one meter in diameter shall be placed or permitted to remain on any Lot.

n. Vehicles and Parking. On-street parking is permitted pursuant to City of Missoula regulations and as may be posted. No motor homes, trailers, trucks one-ton or greater in size, campers, boats, boat trailers, ATVs on trailers, unlicensed ATVs, snowmobiles on or off trailers, recreational vehicles, or non-functioning vehicles shall be parked on any street, or allowed to remain on any of the Lots containing single family Homes, duplexes, or triplexes, unless contained within a garage; provided, recreational vehicles, trailered boats, campers and the like may be temporarily parked in the Owner's driveway while being prepared for use or following use. Temporary for this provision means no more than 48 hours. As to the parking of the above-listed vehicles and trailers on Lots with Multifamily Housing with common or shared parking facilities, it shall be at the discretion of the Lot Owner, provided such Owner shall adopt an express policy governing such parking that includes the ability to restrict unsightly or non-functioning vehicles and trailers or trailered equipment. This provision is not intended to preclude street parking of construction, maintenance, delivery, moving, or other such service vehicles while they are being utilized in connection with services for the property. Declarant and Lot Owners with Multifamily housing shall install appropriate signs addressing parking. No motorized vehicles shall be operated off the roadways or the driveways, except for vehicles engaged in construction or maintenance on the Real Property.

o. Signs. No advertising signs, billboards, or unsightly objects shall be erected, placed, or permitted to remain on any Lot. However, exceptions shall be allowed for one small sign identifying the contractor of a building while such building is under construction, one small "For Rent" or "For Sale" sign per Lot or temporary small signs advertising a garage sale. Political signs may be placed on an Owner's Lot for a period not to exceed 60 days prior to the election to which such sign pertains. All permitted signs may not exceed 1,200 square inches. For a period of fifteen years from the date of this Declaration, the Declarant shall be permitted to place signs within the Real Property to promote its development, with no restrictions on such signage.

p. Nuisances. No noxious, offensive or illegal activity shall be carried on or permitted upon any of the Real Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. The premises shall not be used in any way or for any purpose which may endanger the health or safety of, or unreasonably disturb the residents of any Lot. Nor shall activities on any Lot take place which would be in violation of any applicable statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Real Property or any building situated thereon, shall be committed by the Owner or any tenant or invitee of any Owner, and each Owner agrees to indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by him or his tenants or invitees. An outdoor barbecue shall not be considered a nuisance, provided smokers may not be operated in excess of 8 hours in a row. In addition, nothing shall be done within the Properties which might result in an increase in the premiums for insurance obtained for any portion of the Properties or which might cause cancellation of such insurance.

q. Access and Roadways. Except for Declarant, no Owner shall use part of any Lot to provide access to any adjacent land. Driveway locations and parking shall be considered as part of architectural review.

r. Garbage. No Lot shall be used or maintained as a dumping ground, nor shall any rubbish, trash, garbage or other waste be allowed to accumulate except in sanitary containers which shall be emptied on at least a weekly basis by a licensed local garbage collection firm. Any Owner leasing a Home or Multifamily Housing on his or her Lot shall maintain and pay for garbage service, and may not assign responsibility for such service to the tenant. This provision does not prohibit temporary storage of gravel, topsoil or building materials on Lots if such items are to be used in further construction. On garbage (or recycling) collection days, containers may be placed in a location convenient for collection but not interfering with vehicle traffic, and may be set out the night before, provided containers may not be left out for over 24 hours. All garbage shall be stored in containers provided by the municipal or local garbage collection firm, or shall otherwise comply with such firm's container standard. In any event, all garbage containers when placed for collection shall have tight fitting lids to preclude access by animals. Garbage containers shall otherwise be stored indoors or screened from view from the fronting street. Compost piles are prohibited.

s. Waiver of Right to Protest RID/SID. Acceptance of a deed for a Lot within this subdivision shall constitute the assent of the Lot Owner to waive the right to protest a future SID/RSID. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land.

t. Irrigation. The property no longer has any irrigation associated with it nor water rights to existing irrigation ditches adjacent to or in the vicinity of the property. Access to or disturbance of ditches, or the water within the ditches, by the Owners is prohibited. Portions of ditches may be placed underground and as located on the Plat. No landscaping shall be placed in a manner that might interfere with existing irrigation ditches. All Owners are on notice that access rights in favor of the owner(s) of the irrigation rights for maintenance and repair of the irrigation ditches exist in conjunction with these features. Lots contained within the plat that are classified as irrigated land may be assessed for irrigation water delivery even though the water might not be deliverable to that particular Lot.

u. Weeds and Revegetation. The real property is subject to a Revegetation Plan, attached hereto as Exhibit \_\_\_\_\_. Owners and the Association shall comply with the Missoula County Noxious Weed Management Plan and the Montana County Weed Control Act. All Owners are required to revegetate with beneficial species any areas of ground disturbance created by construction on or maintenance of these Lots at the first appropriate opportunity after disturbance occurs. Declarant shall be responsible for weed management on all undeveloped Lots until transferred to subsequent Owners.

v. Wildlife. Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and

properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, black bear, mountain lion, coyote, fox, raccoon, skunk, squirrels and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see FWP's web site at [www.fwp.mt.gov](http://www.fwp.mt.gov).

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value. The following covenants may not be changed or deleted without governing body approval.

i. Homeowners must be aware of the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.

ii. Gardens and fruit trees can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because ripe or rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fencing of such garden space should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.

iii. Garbage should be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, and other wildlife. If stored indoors, it is best not to set garbage cans out until the morning of garbage pickup; bring cans back indoors by the end of the day.

iv. Do not feed wildlife or offer supplements (such as salt or mineral blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA §87-3-130) to purposely or knowingly attract ungulates (deer, elk, etc.) bears, mountain lions, or wild turkeys with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.

v. Birdseed is an attractant to bears. If used, bird feeders should: 1) be suspended a minimum of 20 feet above ground level; 2) be at least 4 feet from any support poles or points; and 3) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.

vi. Pets must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the direct control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA §87-3-124). Keeping pets confined also helps protect them from predatory wildlife.

vii. Pet food should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such skunks and raccoons. When feeding pets do not leave food out overnight. Consider feeding pets indoors so that wild animals such as bear, skunk or magpie do not learn to associate food with your home.

viii. Barbecue grills should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.

ix. Consider boundary fencing that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. The use of split rail fences or other wildlife-friendly designs is encouraged.

x. Compost piles can attract animals. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)

w. Agricultural Operations. Owners are notice that agricultural operations may exist adjacent to or in the vicinity of the plat. Such operations may produce exposure to odors, dust and noise, exposure to hazards such as irrigation ditches, ponds, fencing, and livestock protection methods, and the use of agricultural chemicals and farm equipment. Owners should be aware of impacts on such agricultural operations, including, but not limited to trespass on adjacent agricultural properties, failure to keep pets contained on an Owners Lot, and traffic impacts.

x. Airport Activities, Paisley Park Subdivision is located adjacent to an existing airport operation. Airport practices can cause discomfort and inconveniences for neighboring residents and businesses. Many practices are a necessary function of certain airport operations and are protected when they are in accordance with the law. Airport activities may result in the following: noise, odors, fumes, dust, smoke, traffic, visual impacts, night time lighting, operation of machinery, and the storage, warehousing and processing of airport equipment or other inconveniences or discomforts associated with the protected airport operations 24 hours a day. If the Property is subject to an avigation easement, the terms and conditions of such easement shall also be applicable to the Owners.

y. Radon. The Owners Lots within the Subdivision are on notice the Environmental

Protection Agency has designated Missoula County as having high radon potential (Zone 1). The Missoula City-County Health Department recommends that all new construction incorporate radon resistant construction features.

z. Numbering/Addressing. Each Home or Multifamily building shall have numbering and/or addressing that is clearly visible from the street in all lighting conditions, which should be at least six inches in height, and shall contrast from the background color.

## **8. Insurance.**

a. General Liability Insurance. The Association shall obtain and maintain a policy or policies insuring the Association, its officers, directors, agents and employees, the Declarant, the Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association with respect to any Common Areas owned by the Association and any portion of the Real Property to be maintained by the Association, per the terms of this Declaration. Limits of liability under such insurance shall not be less than one million dollars (\$1,000,000.00) covering all claims for death, personal injury, and property damage arising out of a single occurrence.

b. Directors and Officers Liability Insurance. The Association may obtain and maintain one or more policies of insurance which include coverage for individual liability of officers and directors of the Association for negligent acts or omissions of those persons acting in their capacity as officers and directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion.

c. Workers' Compensation Insurance. In the event the Association employs any employees, the Association shall procure and maintain workers' compensation insurance on said employees, as is required by state law. In the event the Association contracts with any independent contractors for the provision of services to the Association (including but not limited to the services of an independent contractor acting as manager), it shall require such independent contractor to maintain workers' compensation insurance coverage on all its employees or provide evidence of a legal exclusion from providing such coverage. The Association shall further require the independent contractor to furnish suitable evidence of such coverage or exclusion prior to commencing any works on behalf of the Association.

d. Fidelity Bond Coverage. The Association may also purchase and maintain fidelity bond coverage which names the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If there is a management agent who handles Association funds, such agent shall also be covered by a fidelity bond, if so determined by the Association. If the Association chooses to obtain fidelity bond coverage, the bonds should be in such an amount as the Association deems reasonable and contain a provision that they may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

e. Other Association Insurance. The Association may purchase such other insurance the Board considers necessary or advisable.

f. Individual Property Insurance. The individual Lot Owners shall maintain individual insurance for their Lots and improvements thereon, provided such insurance insures the entirety of the improvements, inclusive of utilities, and the policies of each Owner is of an amount sufficient to provide for the full replacement cost of the improvements. The Association may, at any time, require proof of insurance of any Owner. This provision for insurance, and the insurance coverage called for, may not be changed without the consent of two-thirds of all Owners. Should any Owner fail to maintain the insurance as called for herein, it shall be the right of the Association, on its own initiative or upon demand of any Owner, to secure such required insurance and have the assessments to the defaulting Owner adjusted to reflect such Association-procured insurance coverage. Owners and their tenants, guests, and invitees are encouraged to insure their personal property against casualty loss. Additional or modified insurance provisions may be promulgated by the Declarant relative to multifamily portions of the subdivision.

g. Individual Liability Insurance. The Association is not responsible for acquiring or maintaining liability insurance for the protection of the Owners for their personal acts or omissions or for events occurring within their respective Lots and improvements thereon.

## **9. Damage or Destruction.**

a. Duty to Restore. Any portion of the a Lot or Home or other improvements located thereon that are damaged shall be repaired or replaced promptly by the Owner, unless repair or replacement would be illegal under a state statute or municipal ordinance. In the event an owner elects not to rebuild following total destruction of the improvements, that Owner shall nevertheless restore and repair the surface of the Lot to present a clean and tidy lot, and in no event shall an open basement be allowed to remain in such instance.

b. Repair Plans. The Lots and Homes and other improvements located thereon must be repaired and restored in accordance with either (a) the original plans and specifications, updated as required to reflect applicable building codes, or (b) other plans and specifications which have been approved pursuant to architectural review.

## **10. General Provisions.**

a. Duration. The covenants, conditions, charges and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of each Owner and subsequent Owner, and be enforceable by the Declarant, the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, or assigns, in perpetuity.

b. Enforcement. Any Owner, the Association or the Declarant shall have the option and right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants,

reservations, and charges now or hereafter imposed by the provisions of this Declaration. The method of enforcement may include legal action seeking an injunction to prohibit any violation, to recover damages, or both. Failure by any Owner, the Association, or the Declarant, to enforce any such provisions shall in no event be deemed a waiver of the right to do so thereafter.

c. Attorney's Fees. Should any lawsuit or other legal proceeding be instituted against an Owner who is alleged to have violated one or more of the provisions of this Declaration, the prevailing party in such proceeding shall be entitled to reimbursement for the costs of such proceeding, including reasonable attorney's fees.

d. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

e. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. Each remedy provided for herein is cumulative and not exclusive. Any reference to the singular shall include the plural and any reference to the masculine shall include the feminine or neuter, and vice versa. This Declaration shall be construed and governed under the laws of the State of Montana.

f. Amendment. The Declarant reserves the sole right to amend, modify, make additions to or deletions from this Declaration that it alone deems appropriate, for so long as Declarant owns five or more of the Lots subject to this Declaration. After that time the right to amend shall pass to the Owners, who upon the written consent of two-thirds of the Owners may amend, modify, make additions to or deletions from this Declaration. No such modification or amendment shall be effective until a written instrument evidencing such modification or amendment, together with the necessary consents are executed and recorded upon the records of the Missoula County Clerk and Recorder. Separate consent by the appropriate governing body is required for changes, amendments, or deletions to provisions herein addressing house numbering, revegetation, wildland/urban interface, wildlife, airport influence, weed management, and this provision on amendments.

g. Trust Deed and Mortgage Protection. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat or render invalid the rights of the beneficiary under any deed of trust or mortgagee under any mortgage covering a Lot, made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after foreclosure of any such deed of trust or mortgage, such Lot shall remain subject to this Declaration, as amended.

h. Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given

by such person to the Association for the purpose of service of such notice, or to the address of the Owner's Lot if no address has been given to the Association, or to the taxpayer address information for any Lot as maintained in the Missoula County records. Such address may be changed from time to time by notice in writing to the Association, as provided in this paragraph. These provisions do not preclude electronic notice relative to Association meetings or other notices pertaining to Association business, as may be provided for in the Bylaws of the Association.

i. **Liability of Declarant.** The Declarant shall have no liability for any of its actions or failures to act hereunder, or for any action or failure to act of any Owner or of the Association.

j. **Construction Standards.** Builders should consider the use of energy efficient building techniques such as building orientation to the sun, appropriately sized eaves, wind breaks, extra insulation, passive solar lighting, solar heating, and ground source heat pumps for heating/cooling. Additionally, Missoula City-County Air Pollution Control Program regulations prohibit the installation of wood burning stoves or fireplaces. Pellet stoves that meet emission requirements or natural gas or propane fireplaces may be installed. Pellet stoves require an installation permit from the Health Department.

k. **Radon Mitigation.** The Environmental Protection Agency has designated the Missoula County area as having a high radon potential (Zone 1). All residences should incorporate radon resistance construction features. Owners acknowledge and understand the potential health risk from radon concentrations, which are presently undetermined at this location.

## **11. Annexation of Additional Property.**

a. **By Declarant.** Paisley Park Subdivision is designed to be created and platted in phases. Declarant, at Declarant's sole discretion, may deem it desirable to annex additional real property or phases to the Property covered by this Declaration, and in such order as may be determined desirable by Declarant. Additional real property may be annexed to the Property and brought within the provisions of this Declaration as provided herein by Declarant, its successors or assigns, at any time, and from time to time, without the approval of any Owner. This right shall also include bringing in additional properties to the provision of services even though management or provision of such services may have been transferred to individual Owners. The use and development of such additional real property shall conform to all applicable land use regulations, as such regulations are modified by variances.

b. **Rights and Obligations of Owners of Annexed Property.** Subject to the provisions hereof, upon recording of a Supplemental Declaration as to any additional real property, all provisions contained in this Declaration shall, to the extent practicable and allowed by law, apply to the additional real property in the same manner as if it were originally covered by this Declaration; provided Declarant may make such amendments to such Supplemental Declaration as Declarant may deem advisable and appropriate for the annexed development, and as may be

necessary to meet governmental conditions for subsequent phases.

c. Method of Annexation. The addition of additional real property to the Property authorized above shall be made by filing of record a Supplemental Declaration or other similar instrument with respect to the annexed property, which shall be executed by Declarant or the Owner thereof and which shall annex such property to the Property.

IN WITNESS WHEREOF, the Declarant has executed the foregoing Declaration on the day and year first above written.

OO Land Holding, LLC

by: \_\_\_\_\_  
its: \_\_\_\_\_

by: \_\_\_\_\_  
its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before on the \_\_\_\_\_ day of \_\_\_\_\_,  
202\_\_\_\_, by \_\_\_\_\_, as the \_\_\_\_\_ of OO Land Holding, LLC.

(seal)

Notary Public for the State of \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_ 20\_\_\_\_\_