

880706

DECLARATION OF RESTRICTIONS  
AND COVENANTS TO RUN WITH THE LAND

The undersigned, BLP, LLC, a South Dakota limited liability company (hereafter called "Developer/Declarant"), being the Owner of the following described real property, to-wit:

Lots 1-11, Block 1, Lots 1-16, Block 2, Lots 1-26, Block 3,  
Lots 1-8, Block 4, Lots 1-27, Block 5, all located in Bittercreek  
Estates, Campbell County, Wyoming

hereby states and declares:

That for the purpose of establishing and maintaining the above described property as a desirable modular and/or double wide mobile home residential area in Campbell County, Wyoming, and for the purpose of establishing and maintaining high quality home sites and fair and adequate property values, the following declarations as to restrictions and covenants to run with the land and pertaining to the use of the above described property are hereby adopted and declared. These restrictions and covenants shall constitute covenants to run with the land and shall be binding upon all parties, their successors and assigns.

These Restrictions and Covenants shall be for a period of 25 years from the date of recordation in the office of the Campbell County Register of Deeds, after which time said covenants shall be automatically extended for successive periods of ten years each unless an instrument signed by 70% of the then Owners of the lots included in the above described property has been recorded providing for a change in said covenants, in whole or in part. Invalidation of any covenants provided herein by judgment or court order shall in no way or respect affect any of the other covenants which shall remain in full force and effect.

Developer/Declarant shall have the right, without obtaining the consent of the Owners which consent the Owners waive to supplement and revise these covenants. Such supplemental plats or replats and additional, supplemental, or revised covenants may contain modifications and complimentary additions to reflect the different character, if any, of the additional property which will become part of Bitter Creek Estates Subdivision.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to the Bittercreek Estates Homeowners Association, its successors and assigns. Until such time as the Association is formed as provided in Article II, Section 1, below, Developer/Declarant shall act as the Association and Board of Directors for all purposes hereunder.

Section 2. "Common Areas" shall mean all real property (including improvements thereon) as may be conveyed by Developer/Declarant to the Association or platted as such by Developer/Declarant for the common use and enjoyment of the Owners for recreation and other related activities.

Section 3. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities of a fee simple title to any lot which is a part of the above described real property, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Property" shall mean and refer to the real property now or hereafter subject to these Restrictions and Covenants to Run With the Land as legally described above.

ARTICLE II  
MEMBERSHIP, VOTING RIGHTS, AND  
ORGANIZATION OF ASSOCIATION

Section 1. Developer/Declarant As Association. Developer/Declarant shall act as the Association and Board of Directors for all purposes under this Declaration of Restrictions and Covenants to Run With the Land, until the occurrence of either of the following events:

- A. The sale and closing by Developer/Declarant to Owners of 90% of the lots subject hereto; or
- B. A written declaration signed by Developer/Declarant stating its intention to turn over to the duly elected Board of Directors of the Association all of the duties, rights, obligations and responsibilities of the Association as herein provided; subject, however, to the provisions of Article II, Section 1, paragraph C, below.
- C. Notwithstanding the fact that Developer/Declarant has turned over all of the duties, rights, obligations and responsibilities of the Association to the duly elected Board of Directors, Developer/Declarant shall continue to act as the Association and Board of Directors with regard to all matters relating to all lots that are still owned by Developer/Declarant and lots that have been sold to mobile home/modular home dealers until such time as the mobile home/module home dealer has sold the lot to an Owner occupying a residence on the lot.

A Board of Directors may be elected by the membership at any time; however, the Board of Directors shall not exercise any of the rights, powers and duties granted the Association and its Board of Directors until the occurrence of either Paragraph A or B above and subject to Paragraph C above. Until such time, the decision of Developer/Declarant as to all matters hereunder shall be final and shall not be subject to review or change by the Association or its Board of Directors.

Section 2. Membership. Every Owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any lot covered by these covenants.

Section 3. Voting. Each Owner of a lot covered by these covenants shall be entitled to one vote for each lot owned. When more than one person or entity holds an interest in any lot, all such persons shall be members of the Association, but only one vote for any such lot may be exercised.

Section 4. Board of Directors, Meetings. The Association shall be governed by a six-person Board of Directors. The initial term of the Board of Directors shall be staggered so that the terms of two directors shall expire at the end of two years, four years, and six years, respectively. Directors must be Owners of a lot covered by these covenants. Elections by the membership for each expired term on the Board of Directors shall be held at the annual meeting of the Association membership called by the Board of Directors each year on ten days' written notice to the membership. Special meetings of the membership may be called at any time on ten days' written notice to the membership by the Board of Directors or by any five lot Owners.

The Board of Directors shall meet at such times and locations as needed to conduct the affairs of the Association. In any event, the Board shall meet at least once each year to elect new officers and conduct such other business as it deems necessary. In the event of death, incapacity, resignation, or ineligibility of any director, the remaining directors shall have full authority to designate a successor to complete the term of office. No compensation shall be paid to directors.

A majority of directors shall constitute a quorum; provided, however, that if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting to another time without further notice. The affirmative vote of two-thirds of the directors at which a quorum is present shall be required to constitute an official and valid action. Any action of the Board of Directors may be overturned and nullified by a two-thirds majority vote of the lot Owners.

Section 5. Enforcement. Enforcement of the restrictions and covenants described herein may be by proceedings at law in equity, against any person or entity for injunctive relief or for damages, violating or attempting to violate any restriction or covenants contained herein. Any enforcement action brought herein may be undertaken by the Association or by individual lot Owners with the approval of the Board of Directors of the Association.

Section 6. Disputes. All disputes concerning the application or interpretation of these covenants shall be decided by the Association as to the lots to which the Association has control pursuant to Article II, Section 1; provided, however, that disputes as to lots owned by Developer/Declarant or lots owned by homebuilders shall be resolved by Developer/Declarant as to such lots.

Section 7. Termination. Since at the time these declarations and restrictions and covenants to run with the land were being prepared there existed a substantial probability that the property will ultimately be annexed into the City of Gillette, Wyoming, and that if said annexation takes place, the City of Gillette would provide snow removal, garbage and other services contemplated to be provided by the Homeowners Association, therefore, in the event of annexation of said property, the Homeowners Association may be disbanded by a vote of the majority of the owners and evidenced by a document recorded of record listing the owners and the legal description of the property that voted in favor of the termination.

ARTICLE III  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Developer/Declarant, for each lot owned within the Property hereby covenants, and each Owner of any lot by acceptance of a deed or contract for deed therefore, whether or not it shall be so expressed in such deed or contract for deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Any member or lot Owner shall have the right to inspect the records of the Association at any reasonable time. Notwithstanding the foregoing, all lots owned by Developer/Declarant or by a homebuilder shall not be subject to annual or special assessments as herein provided. The annual and special assessments shall become payable once a lot is sold to a private lot Owner for residential use and occupation by such lot Owner.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property, for the improvement and maintenance of the streets located in the Property, maintenance of parks and common areas and snow removal.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first lot subject to these covenants to a private residential lot Owner, the maximum annual assessment shall be \$120 per lot.

- A. From and after January 1 of the year immediately following the conveyance of the first lot subject to these covenants to a private residential lot Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership by no more than 5%.
- B. From and after January 1 of the year immediately following the conveyance of the first lot subject to these covenants to a private residential lot Owner, the maximum annual assessment may be increased above 5% by a vote of the members for the next succeeding two years, and at the end of each such period of two years, for each succeeding period of two years, provided that any such change shall have the assent of 60% of the votes of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty days nor more than sixty days in advance of the meeting setting forth the purpose of the meeting. Assessments shall become effective and payable commencing with the first month following the month of lot sale closing to a private residential lot Owner.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement within the Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of 60% of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Article II, Section 3 or 4, shall be sent to all members not less than 30 not more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 60% of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 30 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each lot on the first day of the month following conveyance by deed or contract for deed to a private residential lot Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within 30 days after the due date shall be charged interest at the annual percentage rate of 12%. The Association may bring an action at law or against the Owner personally obligated to pay the same, or foreclose the lien against the Property as provided in Article III, Section 1, above. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of the Owner's lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien as to the lot conveyed. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became

due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IV  
MINING COVENANTS, RELEASE AND INDEMNIFICATION, AND DISCLOSURES

Section 1. Mining and Other Operations Nearby: The proposed subdivision is located near an active coal mining operation. The mine is an approved and permitted mine with the existing and continuing right to mine its current coal reserves. Active mines may operate twenty-four hours per day, seven days per week, and may include operation of heavy equipment, blast hole drilling, blasting events, and other activities related to mining. Operation of this mine may result in ground vibration, noise, dust, bright lights at night, and other conditions which may affect the quality of life in this subdivision. Some studies indicate that blasting may temporarily result in trace amounts of nitrogen oxide and nitrogen dioxide fumes after blasts which may cause temporary discomfort to certain individuals, especially those with respiratory disorders. Overly sensitive individuals may need to depart from the area to avoid the discomfort caused by the gases. Persons intending to purchase, lease or rent property in this subdivision are hereby notified that mining coal from an approved and permitted mine is a reasonable and lawful use of its property by the mine operator, and that the mine is not required to curtail or otherwise limit its operations to minimize impacts to the subdivision or its residents. In addition, Western Fuels-Wyoming, Inc. also leases out its property for oil and gas production, grazing, and for other purposes which may adversely affect the Lot's owners and occupants. Methane gas could be released during the production of methane gas from nearby gas well operations. There may be coal seams beneath the subdivision which could become conduits for methane gas and other gas releases.

Section 2. Release and Indemnification: The present owners of Lots and any future owners and occupants of Lots, by these covenants, are hereby notified as to the activities taking place near the Lots as outlined in paragraph one, just referenced. As owner or occupant of any of these Lots or Lot, the owner of said Lot, does hereby release and hold BLP, the City of Gillette, Campbell County and Western Fuels-Wyoming, Inc. its owners, employees, representatives, assignees, and any of its subcontractors or materialmen, or anyone else authorized to act by BLP or Western Fuels-Wyoming, Inc., harmless from any damage whatsoever, and of any nature whatsoever in Western Fuels-Wyoming, Inc. Mining and Other Operations Nearby as described in Paragraph one, just referenced. This release and indemnification shall include attorneys' fees and costs, should BLP, the City of Gillette, Campbell County and/or Western Fuels-Wyoming, Inc. be required to defend any action against any Lot owner(s). However, the lot owners are not prevented from bringing action against Western Fuels-Wyoming, Inc. for their gross negligence or willful actions not contemplated by these covenants, which cause damage to the Lot owners.

Section 3. Covenants and Disclosures to Run with Land: These Covenants and Disclosures shall run with the land and shall be binding on and shall inure to the benefit of Western Fuels-Wyoming, Inc., its successors, and assigns.

Section 4. Modification of Article IV of Covenants and Disclosures: Article IV of these Covenants and Disclosures shall not be amended or altered in any fashion whatsoever, without the written consent of Western Fuels-Wyoming, Inc.

ARTICLE V  
RESIDENTIAL AREA COVENANTS

Section 1. Single Family Residences. All lots covered by these covenants shall be used for one new double wide, modular or mobile home only (not for stick built houses or for single unit modular/mobiles, even though MH Zoning would allow stick built homes in this subdivision) and not for any business, trade, commercial, or industrial purpose whatsoever, except that individuals may conduct a non-nuisance and unoffensive home office business which is not frequented by members of the general public. No daycare businesses are allowed. "Home office business" shall be allowed and is defined as a business conducted from the home primarily by the use of mail, telephone, computer modem, fax, or other communication device which requires no equipment which would otherwise be prohibited by these covenants; its customers or clients do not come to the home as a matter of course; no advertising or signage of any kind is visible on the exterior of the home or yard; the home's principal use remains at all times that of a single family residence; and, notwithstanding the compliance by the business of all requirements set forth herein, such business shall in no way interfere with the use and quiet enjoyment of the Property by any other resident in the subdivision. If any double wide, modular or mobile home on any lot shall be used as a rental, all such rentals shall be subject to all covenants set forth herein and these covenants shall, in such event, be enforceable both against the Owner of the Property and any tenant of the Property. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood. No firearms shall be discharged within the area covered by these covenants.

Section 2. Driveways. There shall be at least a Twenty Four foot by Twenty Four foot driveway on each lot. All driveways are to be constructed of asphalt or concrete.

Section 3. Exterior. All lawns and landscaping shall be completed within nine months from the commencement of home placement. The exterior of every building shall be composed of one or a combination of natural wood, hardyplank, canexel, stucco, colorlok, vinyl siding or other material of a similar or compatible appearance stone or brick or brick veneers. All exterior surfaces shall be painted or stained in earth tone shades of white, brown, tan, beige, green, gray, taupe, or the muted colors of yellow, blue or red. Neon colors are not permitted on the outside of any dwelling. (All structures placed or built on the home site are to be of similar material to the primary residence.) Each dwelling is required to display house numbers of at least three inches in height and of contrasting color, placed on the street side of the dwelling.

Section 4. Roof Construction. All residential structures shall have a minimum roof pitch of 3/12 (meaning that for every 12 lateral feet distance from the eve to the peak of the roof there shall be a 3 foot increase in the elevation of the roof).

Section 5. Setback. No home may be erected within 20 feet of the right of way from the nearest street which the dwelling faces, or within 5 feet of the side boundary of

the Property, or as otherwise specified by the appropriate Planning Board (either the City of Gillette, Wyoming or Campbell County or both).

Section 6. No Lot Split. No lot shall be split or subdivided.

Section 7. Sidewalks, Driveways. All lot Owners/homebuilders must construct a sidewalk as specified in the plat, and such sidewalk shall be constructed at the time of the home placement. Owners shall keep and maintain all sidewalks free of ice, snow or other debris which may pose a risk to persons using the Owner's sidewalks. All driveways shall be installed with paved concrete or asphalt. All sidewalks and driveways shall be private.

Section 8. Vehicles. All vehicles and recreational equipment, including but not limited to boats, motor homes, trailers, campers, recreational vehicles, motorcycles, snowmobiles, and jet skis, (except automobiles and pickups in normal operating condition and in average daily use) shall be kept out of public view or stored in an off-site commercial storage facility. No rebuilding, refinishing or major repairs of motor vehicles shall be permitted outside a garage or other enclosed structure, except for occasional minor repairs and maintenance; provided, however, that such minor repairs must be completed within a 36-hour period. No automobile shall be parked or left on any portion of a lot, other than inside a garage or other enclosed structure, unless it is in operating condition with current license plates.

Section 9. Pets. No animals, livestock or poultry of any kind or nature shall be raised, bred or kept on any of the Property. A total of four cats, dogs or other usual and ordinary household pets may be kept on said Property, provided that none such animals shall be kept, bred or maintained for any commercial purpose. All pets must be confined upon the Owner's Property, or maintained on a leash. Noisy pets, including barking dogs, shall not be kept on the Property.

Section 10. Drainage. Development upon any lot in the above described property shall be performed in such a way as not to seriously detriment or interfere with the natural course of drainage, as the same exists on the date of these covenants. Drainage on or to an adjoining lots is prohibited.

Section 11. Signs; Mailboxes. No signs of any kind shall be permitted on the Property or displayed to the public view; provided, however, it shall be permissible to display on any lot one sign or not more than two feet by four feet (2' x 4') for the limited purpose of advertising the Property for sale or lease by an Owner or his agent. Standard mailboxes for each lot shall be installed for use by each lot in groups of two to four mailboxes at a location designated by Developer/Declarant and paid for by the developer.

Section 12. Utility Easement. Unless otherwise specified on the recorded plat, there is hereby reserved a perpetual easement five feet (5') in width on the interior side of all lot lines for a minor drainage easement and for installation and maintenance of utilities including telephone, electricity, gas, sewer, water and cable television service; exercise of any right pertaining to said easements shall be reasonable and in such a manner as not to unreasonably interfere with utilization of the lots for residential purposes.



Section 13. Water Well. No wells or cisterns shall be drilled, operated or permitted on any lot except as such as may be operated by Developer/Declarant or the Association for the benefit of all lot Owners.

Section 14. Utilities. All utilities, including but not limited to telephone, electricity, gas, sewer, water and cable television shall be buried underground, and no poles for utility purposes shall be permitted above ground on any lot. Satellite dishes shall be out of public view, to the greatest extent possible, and no offensive or intrusive lighting is permitted.

Section 15. Foreclosure. It is expressly provided that a breach of any of the restrictions and covenants herein above set forth shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the said Property, or any part thereof, but said restrictions and covenants shall be binding upon and effective against any Owner of said premises, whose title thereto is acquired by foreclosure, or otherwise, as to any breach occurring after such acquirement of title.

Section 16. Basements. There shall be no basements located within the subdivision.

Section 17. Vacant Lots. Vacant lots shall not be used for the dumping of trash, building materials, scrap, concrete, grass clippings, rocks or excess soil, except by Developer/Declarant during road construction and development of the subdivision lots. Weeds shall be controlled and all grass shall be regularly mowed.

Section 18. Landscaping. No dead or diseased trees, either standing or cut, shall be allowed on any lot. Each Owner shall maintain the landscaping, trees and shrubs on their own site Property. Clothes lines are to be kept out of public view and placed in an inconspicuous location as possible.

Section 19. Fences. No fences shall exceed six feet (6') in height. The color and texture of the fencing material shall be in accordance with approved siding and trim colors of the subdivision covenants. No front yard fences shall be permitted except with the specific written approval of Developer/Declarant or the Association. Any fence abutting a lot line shall be installed with the concurrence of the adjoining lot Owner, whenever possible, and such concurrence shall not be unreasonably withheld.

Section 20. Repairs. All buildings, fences, lawns and landscaped areas shall be appropriately maintained in good condition, and repair. The Association may, at its option, require Homeowners to repair, replace or repaint the exterior of any structure or improvement which has fallen into a state of disrepair or is otherwise in violation of these covenants. Repairs or replacements not performed by the Owner after notification by the Association to the Owner may be performed by the Association and billed to the Owner with interest at 12% per annum until paid. The Association shall be given a reasonable access to all lots for the purpose of performing such necessary repairs or replacements.

Section 21. Wildlife. No feeding of any wildlife, including turkeys shall be permitted, except feeding of other wild birds is permitted.

Section 22. Dogs. All dogs shall be kept in a fenced area or on a leash. No dogs shall be permitted to run at large.

ARTICLE VI  
COMMON AREAS; ASSOCIATION

Section 1. The Homeowners Association shall be responsible for all common areas. The association is responsible for payment of any and all real estate taxes assessed on the common areas.

Section 2. Operation of Common Areas. The Association shall establish reasonable rules and regulations governing use of the Common Areas and streets which shall be consistent with the provisions of these covenants. No motorized vehicles shall be permitted on the Common Areas or on the bike paths. The Association may provide for appropriate insurance coverage relating to the improvements to the Common Areas and the use of the Common Areas by Owners, their families, guests and invitees.

ARTICLE VII  
AMENDMENTS TO COVENANTS

So long as Developer/Declarant owns any lots subject hereto or owns any lots in a recorded plat of additional lots which are subsequently made subject hereto, these covenants may be amended at any time by Developer/Declarant and may not be amended by the lot Owners or the Association without the written consent of Developer/Declarant. At such time as Developer/Declarant no longer owns any lots subject hereto, including any lots in a recorded plat of additional lots which may subsequently be made subject hereto, then these covenants may be amended at any time with the consent of 75% of the lot Owners at an Association meeting duly called for such purpose.

DATED: September 14, 2006.

Developer/Declarant:

BLP, L.L.C.,  
a South Dakota Limited Liability Company

By   
Barry Peterson

Its: Member

By   
Luke Peterson

Its: Member

