

# FLATHEAD VALLEY PARADE OF HOMES®

## EXHIBIT A: BUILDER AGREEMENT

FLATHEAD VALLEY PARADE OF HOMES® September 13-14, 2024

**PLEASE READ ENTIRE DOCUMENT.**

**Sign page 18 of this agreement and submit original with Application form.**

This agreement to include a home(s) in THE FLATHEAD VALLEY PARADE OF HOMES® is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the FLATHEAD BUILDING ASSOCIATION (“FBA”), a Montana non-profit trade corporation, with its principal place of business located at 40 2<sup>nd</sup> Street East, Suite 202, Kalispell, MT 59901, and "BUILDER" identified below.

“BUILDER” desires to construct or remodel a home to display in the 2024 FLATHEAD VALLEY PARADE OF HOMES®.

### TABLE OF CONTENTS

SECTION I. PARTIES AND TERMS.....	Page -4-
SECTION II PURPOSE OF THIS AGREEMENT .....	Page -5-
SECTION III TERMS.....	Page -5-
1. FLATHEAD VALLEY PARADE OF HOMES® DATES & HOURS OF OPERATION .....	Page -5-
2. ENTRY. ....	Page -5-
3. APPLICATION ENTRY FEE AND OTHER FINANCIAL OBLIGATIONS OF BUILDER. ....	Page -6-
3.1 As consideration.....	Page -5-
3.2 Entry Fee Schedule.....	Page -6-
3.3 LATE FEE .....	Page -6-
3.4 WITHDRAWAL OF HOME AND BUILDER ENTRY FEE REFUND DEADLINE. ....	Page -6-
3.5 PAYMENT OF FBA AND VENDORS/SUPPLIERS. ....	Page -6-
4. BUILDER COOPERATION.....	Page -7-
4.1 BUILDER must fully cooperate.....	Page -7-
4.2 COMPLETION DATE.....	Page -7-
5. CONSTRUCTION STANDARDS AND INSPECTION.....	Page -8-
5.1 INSPECTION .....	Page -8-
5.2 COPYRIGHT. ....	Page -9-
5.3 WORKMANSHIP.....	Page -9-
5.4 CONSTRUCTION ON THE HOME.....	Page -9-
5.5 DECORATING AND LANDSCAPING.....	Page -9-
5.6 OCCUPANCY.....	Page -9-
6. PRE-SOLD HOME. ....	Page -9-

6.1	If home has been sold, .....	Page -9-
6.2	The completed Participation and Release Agreement ....	Page -10-
6.3	FBA assumes no position.....	Page -10-
7.	<b>PARADE SHOWING</b> .....	Page -10-
7.1	<b>SHOWING THE HOME</b> . ....	Page -10-
7.1.1	The BUILDER agrees to show.....	Page -10-
	.....	Page -10-
7.1.2	CLEANING. ....	Page -10-
7.2	<b>PARKING AND TRANSPORTATION OF GUESTS</b> .....	Page -10-
7.3	<b>PORTABLE RESTROOM FACILITIES</b> .....	Page -10-
7.4	<b>AMERICANS WITH DISABILITIES ACT</b> . ....	Page -10-
7.5	<b>TICKET TAKERS AND PARADE HOME PERSONNEL DURING PARADE OF HOMES®</b> . ....	Page -11-
7.6	<b>EXHIBITS</b> .....	Page -11-
7.6.1	The BUILDER is authorized .....	Page -11-
7.6.2	FBA may in its sole discretion.....	Page -12-
7.6.3	The BUILDER will receive no remuneration.....	Page -12-
7.6.4	BUILDER will provide space .....	Page -12-
7.7	<b>SPRINKLER SYSTEMS</b> .....	Page -12-
7.8	<b>SIGNS &amp; POSTERS</b> .....	Page -12-
7.8.1	BUILDER is responsible .....	Page -12-
7.8.2	BUILDER acknowledges.....	Page -12-
7.8.3	Outside Signage:.....	Page -12-
7.8.4	Interior Signage:.....	Page -12-
7.8.5	FBA will provide BUILDER signs.....	Page -12-
7.8.6	FBA will provide up to five (5) directional signs	Page -13-
7.8.7	FBA reserves the right to remove .....	Page -13-
7.9	<b>MUSIC</b> .....	Page -13-
7.10	<b>SECURITY</b> .....	Page -13-
7.11	Penalties:.....	Page -13-
8.	<b>PROTECTION OF FBA</b> .....	Page -13-
8.1	<b>USE OF PARADE OF HOMES</b> .....	Page -13-
8.2	<b>INSURANCE</b> . ....	Page -13-
8.2.1	FBA is not obligated to .....	Page -14-
8.3	<b>WAIVER OF BUILDER RIGHTS</b> . ....	Page -14-
8.4	<b>INDEMNIFICATION AND DUTY TO DEFEND</b> .....	Page -14-
8.5	<b>NO RIGHT TO REMUNERATION FROM FBA</b> .....	Page -15-
8.6	<b>RULE ENFORCEMENT</b> .....	Page -15-
8.6.1	FBA's parade committee members .....	Page -15-
8.6.2	If the violation is remedied.....	Page -15-
8.6.3	The intent of this agreement .....	Page -15-
8.6.4	Determinations by the Board of Directors .....	Page -15-
9.	<b>MARKETING</b> .....	Page -15-
9.1	<b>MEDIA AND MARKETING</b> .....	Page -15-
9.2	<b>PRE-PARADE</b> . ....	Page -15-
9.3	<b>PARADE BUILDER TICKETS</b> . ....	Page -16-

9.4 PARADE MAGAZINES.....	Page -16-
9.4.1 <u>GENERAL MAGAZINE AGREEMENTS</u> .....	Page -16-
9.4.2 PRICING & PRICE DISCREPANCIES. ....	Page -16-
10. ADDITIONAL BENEFITS TO BUILDER.....	Page -16-
10.1 VENDOR DISCOUNTS/FREE UPGRADES.....	Page -16-
10.2 AWARDS.....	Page -16-
10.2.1 JUDGING.....	Page -16-
10.2.2 BUILDER AWARDS. ....	Page -16-
10.2.3 GRAND PRIZE AND DOOR PRIZES. ....	Page -17-
11. MISCELLANEOUS PROVISIONS .....	Page -17-
11.1 CANCELLATION.....	Page -17-
11.2. Severability. ....	Page -17-
11.3. Entire Agreement. ....	Page -17-
11.4 Non-assignability. ....	Page -17-
11.5. Notices.....	Page -17-
11.6. Governing Law, Jurisdiction, and Venue.....	Page -17-
11.7. Modification and Amendment.....	Page -17-
11.8 Time. ....	Page -17-
11.9 Counterparts. ....	Page -17-
11.10 Waiver .....	Page -17-
11.11 NO GUARANTEE.....	Page -17-
12. COSTS AND EXPENSES OF ENFORCEMENT.....	Page -17-

## SECTION I. PARTIES AND TERMS

**FBA:** FLATHEAD BUILDING ASSOCIATION, a Montana non-profit trade corporation, with its principal place of business located at 40 2<sup>nd</sup> Street East, suite 202, Kalispell, MT 59901, which is organized under the laws of the State of Montana.

***BUILDER:*** *All Parade of Homes Builder participants must be Builder members of The Flathead Building Association in good standing and dues current throughout the entire process – from application through Parade Event weekend. In addition, in accordance with the NAHB Builder definition as follows per Article I, Sec. 1 of NAHB bylaws:*

***BUILDER MEMBER.*** *Any individual who is or has been in, or employed by a firm or corporation in the business of building or remodeling of homes, apartments, schools, commercial, industrial, or other structures normally related and appurtenant to a community, or in land development and is of good character and business reputation, shall be eligible to be a builder member provided such individual, or the firm or corporation which employs him or her, is in the above described business:*

- (i) has been accepted as a builder member in good standing of any Affiliated Local Association, Chapter, or State Association of this Association, or*
- (ii) operates in an area not within the jurisdiction of any Affiliated Local Association, Chapter, or State Association.*

Where a firm or corporation has been accepted as a builder member of any Affiliated Local Association, Chapter, or State Association, the employee who is designated by that firm or corporation as its representative for its dealings with the Affiliated Local Association, Chapter, or State Association shall be eligible for builder membership in this Association. If the representative leaves the firm's employ, the firm or corporation may designate another representative for the balance of the NAHB membership year.

**FLATHEAD VALLEY:** Is that physical area defined by the boundaries of Flathead and Lake Counties, Montana.

**FBA, BUILDER, and HOMEOWNER** may sometimes be referred to in this Agreement as, collectively, the "Parties," and individually as a "Party."

**HOMEOWNER:** Is the person who has actual or constructive ownership of the property upon which the home is located or if the ownership is separate of the said property and the actual or constructive owner of the home as evidenced by the conveyance, including but not limited to deeds or notices of purchaser's interest, which are of record with the Clerk and Recorder of Flathead County Montana

**HOME:** The building constructed for human habitation which is being displayed. Home may include free standing structures, condominium, duplex units and alike.

**PARADE:** The Flathead Valley PARADE OF HOMES

## SECTION II PURPOSE OF THIS AGREEMENT

FBA sponsors and promotes, as an annual fund-raising event, PARADE, a publicized and organized event to promote public interest in and exhibit select homes in the Flathead Valley. BUILDER has agreed to build or remodel a home on a site located in Flathead Valley. **The home is to be completed by Monday, September 9<sup>th</sup>, 2024.** The Parties desire that the home built or remodeled by BUILDER to be displayed in the 2024 FLATHEAD VALLEY PARADE OF HOMES® sponsored by the FBA. This agreement will set forth the terms under which BUILDER shall be allowed to display the home as part of Parade.

NOW, THEREFORE, in furtherance of the above stated purpose and in consideration of the promises, agreements and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## SECTION III TERMS

**1. FLATHEAD VALLEY PARADE OF HOMES® DATES & HOURS OF OPERATION.** The Parties acknowledge that the FLATHEAD VALLEY PARADE OF HOMES® shall run from **September 13, 2024 through the September 14, 2024** (the "PARADE OF HOMES® Dates"). The FLATHEAD VALLEY PARADE OF HOMES® shall be conducted Friday 8:00am to 8:00 p.m., Saturday 10:00 a.m. until 6:00 p.m. Additional schedules and policies shall be set by the FBA. The BUILDER acknowledges and agrees that during the FLATHEAD VALLEY PARADE OF HOMES® hours, the entire home must stay open to the public. BUILDER waives the right to close the home during the Parade hours for any reason unless prior arrangements have been made with FBA. FBA will notify the BUILDER if for any reason there is a temporary shutdown of the Parade.

**2. ENTRY.** The BUILDER agrees the Home to be shown in the FLATHEAD VALLEY PARADE OF HOMES® is located on Property in the FLATHEAD VALLEY. The address of the Property and a legal description of the Property are included on Exhibit "A" (BUILDER Home Application), and incorporated herein by reference. The Home shall be a newly constructed or remodeled home. The BUILDER agrees that all improvements to the Property will be furnished by the BUILDER and in the case of a remodeled property; more than 50% of the value of the home was improved by the BUILDER.

### **3. APPLICATION ENTRY FEE AND OTHER FINANCIAL OBLIGATIONS OF BUILDER.**

3.1 As consideration for being allowed to participate in the FLATHEAD VALLEY PARADE OF HOMES™, BUILDER shall pay an entry fee as outlined in “BUILDER Fee Schedule,” below, by or before the deadline listed below to FBA in order to participate. This entry fee (the “Entry Fee”) shall be non-refundable after the deadline listed below, if prior to that date, BUILDER has not made a written request to FBA to withdraw the Home from the FLATHEAD VALLEY PARADE OF HOMES®. Such request must be physically received by FBA prior to the deadline.

#### **3.2 BUILDER FEE SCHEDULE:**

**\$2,500 for each home entered, fee due with application.**

**Fees are payable by cash, check, and credit/debit card.  
Please make checks payable to FBA.**

**3.3 LATE SUBMISSION:** PARADE APPLICATIONS (EXHIBIT A) RECEIVED AFTER **FRIDAY, MAY 31<sup>st</sup>, 2024** WILL BE CONSIDERED LATE. ACCEPTANCE OF THE APPLICATION WILL BE AT THE DISCRETION OF THE FBA BOARD OF DIRECTORS.

#### **3.4 WITHDRAWAL OF HOME AND BUILDER ENTRY FEE REFUND DEADLINE.**

If the BUILDER withdraws Home from the Parade after Monday, June 10, 2024 the BUILDER forfeits Parade Home Deposit. Partial refund of fees in special circumstances may be considered by FBA on a case by case basis for withdrawal of Home by the BUILDER. Such refund is in the sole discretion of FBA.

BUILDER acknowledges withdrawal of Home by the BUILDER after July 3<sup>rd</sup>, 2024 may result in Home appearing in the Parade of Home Magazine. In such an event, should it be necessary as determined by the FBA, BUILDER agrees to post FBA approved and provided signs at Home during Parade dates and hours indicating Home is not available for showing. FBA will notify all other BUILDERS that Home has been withdrawn and provide a printed flier to be passed out to Parade attendees, committee and staff.

#### **3.5 PAYMENT OF FBA AND VENDORS/SUPPLIERS.**

BUILDER shall pay all bills or invoices of FBA as required by this AGREEMENT.

BUILDER agrees to not withhold payment to vendors and suppliers for the amounts legally due. BUILDER acknowledges that the FBA may incur damages if all amounts due vendors and suppliers are not paid prior to the FLATHEAD VALLEY PARADE OF HOMES® Dates.

BUILDER agrees to pay for all upgrades and extras in a timely manner.

FBA is authorized by BUILDER to and will from time to time during construction, the dates around the FLATHEAD VALLEY PARADE OF HOMES® and following the FLATHEAD VALLEY PARADE OF HOMES®, verify vendors/suppliers are receiving payments. FBA will also research and investigate any liens placed on the Parade Home.

If BUILDER does not pay vendors/suppliers what is legally due in a time deemed appropriate by the FBA, BUILDER acknowledges FBA may invoke an exclusion of BUILDER from future FLATHEAD VALLEY PARADE OF HOMES® events for a maximum penalty of up to three (3) consecutive years, forfeiture of any deposit and revocation of membership with the FBA as determined by the FBA Board of Directors.

#### 4. BUILDER COOPERATION.

4.1 BUILDER must fully cooperate with FBA. BUILDER agrees to timely provide all information required or requested by FBA in accordance with the deadlines established by FBA for the PARADE.

##### 4.2 COMPLETION DATE.

a. BUILDER acknowledges that all decision-making authority with respect to whether the home is completed and safe for the purposes of participation lies with the FBA in its sole discretion.

b. A complete and safe house is one where no safety hazards are presented to the public, the exterior is complete as well as the interior as determined by FBA, the Inspections Committee, Co-Chairs and/or Executive Director and all items listed on the Inspection Checklist are complete to the satisfaction of the FBA. Permanent services for water, electricity, gas (if applicable) will be operational. The front yards must be landscaped and the back yard in the final grade stage. The interior, exterior, driveways, sidewalks and garage will be safe and free of debris. Plain dirt from the street to the house is not acceptable.

A Safe Home may include but is not limited to the following:

- Temporary safety rails on open side of stairways, landings, porches, and other similar areas.
- Prevent public access to areas that may be unsafe or hazardous.
- Store all unsafe or hazardous material in area(s) not accessible to the public.
- Prohibit the consumption of any alcoholic beverages in the home except during approved dates and times jointly agreed upon by the FBA and BUILDER.

c. BUILDER agrees that all construction on the Home, including landscaping and decorating, shall be completed by **Monday, September 9<sup>th</sup>, 2024** at 8:00 a.m.

Completion shall be determined by inspections conducted, pursuant to Section 5 of this Agreement. If BUILDER is judged not finished by Inspections Committee, Parade Co-Chairs and/or Executive Director, it is BUILDER's responsibility to call a Co-Chair or Executive Director and schedule a visit to determine completion. If Home is not complete on any dates of the Parade, Parade signage will be retained by the FBA and Home will not be available for display or viewing. If home is not finished by completion date and time indicated, BUILDER will forfeit any deposit, and further exclusion from future consecutive FLATHEAD VALLEY PARADE OF HOMES® events for a maximum penalty of up to three (3) years will be considered as determined by the FBA Board of Directors in their sole discretion.

If the Co-Chairs and Executive Officer deem BUILDER incomplete by said completion date, BUILDER becomes ineligible for People's Choice along with any other award that same year.

If BUILDER ignores FBA decision on an incomplete home and continues to show the home in violation of this Agreement, BUILDER will forfeit any deposit and further, exclusion from future FLATHEAD VALLEY PARADE OF HOMES® events and revocation of membership with the FBA will be considered as determined by the FBA Board of Directors.

## 5. CONSTRUCTION STANDARDS AND INSPECTION.

5.1 **INSPECTION.** The BUILDER agrees that FBA and its agents and employees may need entry and access to the Home to inspect work performed and progress during the construction or remodel of the Home. FBA will perform progress construction inspections throughout the construction process and the FBA Inspections Committee, Co-Chairs and/or Executive Director will inspect the construction to determine likelihood of meeting the completion date. The FBA Inspections Committee will be selected by FBA. Further, the FBA Inspections Committee will inspect the construction on the home to determine if BUILDER is constructing the Home in a professional and workmanlike manner, and if the construction reflects the high building standards of the FBA. BUILDER acknowledges FBA representatives have the right to take photos of any area inside or outside the home during inspections and visits in order to document progress of home in relation to event timelines. Failure to meet scheduled progress at any time may result in removal from the FLATHEAD VALLEY PARADE OF HOMES®. In addition to the times included on Exhibit C, Inspection Checklist, the following provisions will be included in the determination as to whether the Home passes or fails inspection.

5.2 **COPYRIGHT.** If the house is a result of an original design, legal rights to use the design from the copyright owner and to the design as represented in the structure, plans, specifications, and drawings for the home are the responsibility of the BUILDER.

5.3 **WORKMANSHIP.** Parade Homes must meet all restrictive covenants and permit requirements and shall be constructed in a good workmanlike manner, in accordance with all recognized codes and ordinances. BUILDER is responsible for final inspections as required by the jurisdiction in which the home is located prior to Home Completion.

5.4 **CONSTRUCTION ON THE HOME.** The BUILDER agrees and acknowledges that the Construction Contractor is a general contractor properly registered in the State of Montana, and will remain properly registered throughout the entire construction of the Home. In the event the Construction Contractor's registration should be questioned, become delinquent, or otherwise become ineffective, the BUILDER will immediately notify FBA. The BUILDER further acknowledges that Construction Contractor is and will remain the general contractor responsible for the construction on the Home. The BUILDER acknowledges and agrees that the building permit for construction on the Property, BUILDER's company registration, and BUILDER's insurance will be in the BUILDER's name and will remain in the name of the BUILDER throughout the entire construction of the Home. BUILDER agrees that the Home will comply with all zoning and building regulations in the area in which the Home is to be built. The BUILDER further, agrees and represents that the Home will be built in a professional and workmanlike manner, and will reflect the high standards of the members of FBA.

5.5 **DECORATING AND LANDSCAPING.** The BUILDER agrees that the Home will be completed, decorated, and landscaped by the completion deadline listed above, and will include, but not be limited to, wall coverings, window treatments, pictures, arrangements, and furniture. The BUILDER agrees that the yard shall be free from construction debris, presentable with final grading or landscaping, safe and sturdy access with sidewalks and driveways completed. In the event the BUILDER chooses to seed or hydro seed the landscaping, it must be completed early enough to show as mature by the beginning of the FLATHEAD VALLEY PARADE OF HOMES DATES. ® Dates.



5.6. **OCCUPANCY.** Excluding remodels, if home is within a jurisdiction that issues Certificates of Occupancy, a Certificate of Occupancy must be provided to the FBA on the due date of **Thursday, September 12<sup>th</sup>, 2024** or prior to the opening of the FLATHEAD VALLEY PARADE OF HOMES®.

## 6. **PRE-SOLD HOME.**

6.1 If home has been sold, the HOMEOWNER must agree in writing to all provisions of the Participation and Release Agreement and sign it.

6.2 The completed Participation and Release Agreement must be counter-signed by BUILDER and returned to FBA before the First Builder meeting.

6.3 FBA assumes no position in matters concerning BUILDER and HOMEOWNER relations. FBA has no obligations to HOMEOWNER and all rights and liabilities shall be determined between BUILDER and HOMEOWNER. However, all parties (FBA, BUILDER and HOMEOWNER) must abide by the contents of this Participation and Release Agreement. BUILDER shall be responsible to FBA should HOMEOWNER violate the terms of this agreement or Participation and Release Agreement.

## 7. **PARADE SHOWING.**

### 7.1 **SHOWING THE HOME.**

7.1.1 The BUILDER agrees to show the entire Home during the FLATHEAD VALLEY PARADE OF HOMES® Dates. However, upon written application by the BUILDER, FBA may at its discretion permit specific room areas and basements to be excluded from showing to the public. The following will be the responsibility of the BUILDER:

- a. Leave on a front door light each night during the PARADE to provide adequate lighting of walkways and entry to the home after dark.
- b. Maintain the home and surrounding site, including yards, walkways, and driveways, in a clean and safe condition during PARADE hours.

7.1.2 **CLEANING.** BUILDER is responsible for cleaning Parade home, yard, garage and surrounding street area each day during the Parade. Each home shall be cleaned, opened, staffed and ready for showing 15 minutes prior to Parade opening each day. BUILDER is responsible for all final cleaning of Parade home, and all costs incurred.

7.2 **PARKING AND TRANSPORTATION OF GUESTS.** BUILDER agrees to provide and be responsible for, at BUILDER's sole expense, parking for the public during the FLATHEAD VALLEY PARADE OF HOMES® at his Parade Home. Parking will be in accordance with all local municipal, county and federal laws and regulations, reviewed and must be deemed appropriate by the FBA.

If such parking is offsite, FBA may determine transportation shuttle service from parking to the Parade Home is required and BUILDER agrees to provide such service at BUILDER's expense. Shuttle service may be required by gated communities or other neighborhoods, and is encouraged at cluster sites or wherever large numbers of Parade guests are anticipated. The hiring and operation of shuttle service must be arranged and paid for by the BUILDER or BUILDERS who choose to use this form of guest transportation.

**7.3 PORTABLE RESTROOM FACILITIES.** The BUILDER agrees to provide and be responsible for, at BUILDER's sole expense, restroom facilities other than those in the home for the public during the FLATHEAD VALLEY PARADE OF HOMES® at his Parade Home. The BUILDER agrees to provide handwashing stations or hand sanitizer for the public.

**7.4 AMERICANS WITH DISABILITIES ACT.** BUILDER will assure that service animals shall not be precluded from accompanying the animal owner in viewing the home. Although not necessarily required by law to do so, BUILDER will endeavor to make such accommodations as are necessary to allow handicapped individuals to participate in the enjoyment of the FLATHEAD VALLEY PARADE OF HOMES®,

**7.5. TICKET TAKERS AND PARADE HOME PERSONNEL DURING PARADE OF HOMES®.**

a. The BUILDER agrees to provide, at the BUILDER's expense, representatives at the Home during the FLATHEAD VALLEY PARADE OF HOMES® hours. Further, BUILDER agrees to cooperate with FBA in preventing unauthorized persons from entering the home during the FLATHEAD VALLEY PARADE OF HOMES® Dates listed above.

b. The BUILDER agrees to provide, at the BUILDER's expense, representatives at the entry door during the FLATHEAD VALLEY PARADE OF HOMES® hours. The BUILDER's personnel will ensure each attendee will wear the appropriate booties with/without shoes as required by the BUILDER and will direct attendees regarding whether photography, food or children are permitted in the home by the BUILDER.

c. The FBA and the BUILDER agree to have a ticket staff at the Home during the FLATHEAD VALLEY PARADE OF HOMES® hours to take tickets before entry is permitted.

d. BUILDER agrees to follow all ticket rules established in writing by FBA.

e. Builder agrees to appoint a representative or liaison who will be present at the home for the entire parade, to serve as an informed point person for FBA and volunteers. This same person should attend all builder meetings.

f. BUILDER is responsible to provide adequate space at the Home entry to setup the Ticket table and seating for the ticket takers as required by the FBA.

g. Cashbox and/or unsold tickets are the responsibility of the BUILDER and should be collected each night and stored in a locked area inside the home and then placed out again the next day for ticketing volunteers.

h. No one is to be admitted without a ticket.

**EXCEPTIONS:**

1. Parade Committee member(s)–identified by FBA Badges.
2. FBA staff and volunteer ticket takers identified by FBA Badges.
3. BUILDER personnel staffing the home during the Parade – identified by FBA Badges

i. The BUILDER'S BOX and signage must be returned to the FBA at the FBA offices within 10 days following the PARADE.

j. Ticket takers are required to wear a FLATHEAD VALLEY PARADE OF HOMES® badge provided by the FBA.

7.6. **EXHIBITS.** FBA may authorize certain booths or products to be displayed on the Property, particularly in the garage and on the driveway.

7.6.1 The BUILDER is authorized to display materials promoting BUILDERS construction business at no charge (the "BUILDERS BOOTH") in the garage of the Home. The location of BUILDERS BOOTH must be submitted for FBA for review and approval.

7.6.2 FBA may in its sole discretion authorize separate booths at the Home (the "PAID BOOTHS"). The location and size of said PAID BOOTHS shall be at the sole discretion of FBA. The fees for PAID BOOTH space will be outlined in the EXHIBITOR CONTRACT, and such fees are subject to change at the FBA sole discretion. FBA will receive all proceeds from rental of PAID BOOTHS.

7.6.3 The BUILDER will receive no remuneration for the PAID BOOTHS, and agrees the FBA will have complete control over the PAID BOOTHS. FBA will review with BUILDER the list of any PAID BOOTHS scheduled for the home prior to **Tuesday, August 20, 2024**. BUILDER may refuse to allow certain PAID BOOTHS provided such refusal is communicated to FBA in writing by **Friday, August 23, 2024**.

7.6.4 BUILDER will provide space for ticket takers and a table in the garage is an open area accessible by the public in case of rain or inclement weather.

7.6.5 MAINTAINED: All booths will be maintained throughout the FLATHEAD VALLEY PARADE OF HOMES®. Participants of the PAID BOOTHS and the OTHER DISPLAYS will be allowed to enter the Property during the FLATHEAD VALLEY PARADE OF HOMES®.

The BUILDER will ensure that no unauthorized booths or displays are on the Property.

All PAID BOOTHS and OTHER DISPLAYS must be maintained in a clean and orderly manner. BUILDER is advised that the FBA staff has the right to take down any PAID BOOTH or OTHER DISPLAY for any violation of agreed upon rules and requirements or if the booth or display does not reflect the high standards of the members of FBA.

7.7 **SPRINKLER SYSTEMS.** Automatic lawn sprinklers shall be set to operate between 10:00 p.m. and 9:00 a.m. only. SPRINKLER SYSTEMS MUST NOT OPERATE DURING PARADE HOURS.

#### 7.8. **SIGNS & POSTERS.**

7.8.1 BUILDER is responsible for picking up, installing, removing and returning all signs provided by FBA. The cost of the sign will be charged to the BUILDER or held from the deposit if a sign is not returned within 10 business days following the PARADE OF HOMES.

7.8.2 BUILDER acknowledges that it is critical that all signs erected during the PARADE be uniform and approved by FBA prior to placement.

7.8.3 Outside Signage: One (1) large Parade Home site sign will be provided by FBA. Directional and ticket information signs will also be provided. No other signs are allowed without prior FBA approval.

7.8.4 Interior Signage: Will be provided by the BUILDER.

7.8.5 BUILDER will provide signs regarding whether photos can be taken, reminders regarding children and no food or beverage signs as needed, or any signs acknowledging subcontractors or suppliers. Design should be neat and consistent.

7.8.6 FBA will provide up to five (5) directional signs for BUILDER to display to direct vehicular traffic to the home. More signs can be obtained if available or at an additional cost paid by the BUILDER.

7.8.7 FBA reserves the right to remove any signs placed by BUILDER during the PARADE that have not been provided by FBA or that have been inappropriately placed, as determined by the FBA, in accordance with the Agreement.

7.9. **MUSIC.** The BUILDER acknowledges that FBA is not a member of The American Society of Composers, Authors, and Publishers (the "ASCAP") and is not authorized to play any copyrighted music in the Home during the FLATHEAD VALLEY PARADE OF HOMES® hours. The BUILDER assumes any liability and shall be liable for any copyright violation caused by the BUILDER'S use of copyrighted music and shall indemnify FBA for any and all royalties, fees, penalties, etc., that are incurred as a result of such violation.

7.10 **SECURITY.** BUILDER shall provide reasonable and necessary security during the PARADE. BUILDER acknowledges that FBA does not provide and is not required to provide security. BUILDER assumes the risk of any insufficient security and hereby releases FBA from any and all responsibility and liability concerning security.

Builder agrees to have a BUILDER's staff at the Home during the FLATHEAD VALLEY PARADE OF HOMES®' hours to staff the entry and throughout the Home. BUILDER's personnel will ensure protection of the property, the home, any personal property on the Property, and any persons on the Property during the FLATHEAD VALLEY PARADE OF HOMES®.

BUILDER must carry adequate insurance to cover any property damage that may occur to home, and/or to contents of home (See: Insurance provisions, infra)

7.11 Penalties: If the BUILDER fails to show the Home to the public during the FLATHEAD VALLEY PARADE OF HOMES® Dates pursuant to this Agreement or violate any other provision of this Section 7, the BUILDER shall forfeit any deposit and shall forfeit eligibility to enter a home in up to three future consecutive years of the FLATHEAD VALLEY PARADE OF HOMES®, subject to review and decision by the FBA Board of Directors.

## **8. PROTECTION OF FBA.**

8.1. **USE OF PARADE OF HOMES, PEOPLE'S CHOICE, or JUDGE'S CHOICE REFERENCE, LOGO, OR TRADEMARK ("MARKS").** Prior to the use of any MARKS, written permission from FBA is required. The purpose of this requirement is to ensure the MARKS are being used appropriately as well as keeping FBA aware of the overall usage of the PARADE OF HOMES MARKS. BUILDER will request permission for use of the MARKS by submitting a sample of materials in which BUILDER intends to use the MARKS to the FBA. BUILDER will inform representatives, subcontractors, suppliers, realtors, marketers and advertisers of this

policy. Permission for use will be granted on a case-by-case basis and can only be given by the Executive Director or the Executive Board of Directors. If granted, permission will be provided through written approval from the FBA.

**8.2 INSURANCE.** BUILDER shall supply a certificate of insurance to FBA by no later than **the first Mandatory Builder Meeting**. The certificate is to bear the name, address and telephone number of the Producer and an original signature of the authorized representative of the producer. The certificate shall show that BUILDER, irrespective of the ownership of the HOME, secured at its own cost and is maintaining in force for the total period of the Parade, General Liability Insurance. The coverage shall have minimum limits of \$1,000,000 per occurrence and in aggregate. The coverage will contain a waiver of subrogation and name FBA as an additional insured.

8.2.1 FBA is not obligated to review the certificate and BUILDER may not in any way rely upon any review by FBA as a determination of the extent of insurance BUILDER or HOMEOWNER should provide and maintain. A failure of FBA to detect that BUILDER has not submitted certificates or proper certificates, or is otherwise not in compliance with this provisions shall not be considered a waiver or other impairment of FBA's rights under such provisions or a representation to BUILDER or HOMEOWNER.

**8.3 WAIVER OF BUILDER RIGHTS.** The BUILDER waives all rights against FBA, including rights of subrogation, for damages caused by fire or other perils.

**8.4 INDEMNIFICATION AND DUTY TO DEFEND.**

BUILDER (and HOMEOWNER if applicable) shall indemnify, defend, protect and hold harmless FBA, all subsidiaries, divisions, members, and affiliated companies of FBA, and all of such parties' representatives, volunteers, partners, designees, officers, directors, shareholders, members, employees, consultants, agents, successors and assigns (collectively, the "Indemnified Parties"), from and against any and all claims demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and all other professional, expert or consultants' fees and costs and FBA general and administrative expenses of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided under this Agreement or related to the performance of this agreement including but not limited to defects in workmanship or materials and/or design defects if the design originated with BUILDER or BUILDER'S presence or activities conducted on the Project, the negligent and/or willful acts, errors or omissions of BUILDER, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them regardless of any active or passive negligence or strict liability of an Indemnified Party. Notwithstanding the foregoing, nothing herein shall be construed to require BUILDER to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

In addition, BUILDER will defend Indemnified Parties from any claims as described above including but not limited to claims for bodily injury, death or damage to property, at BUILDER's sole cost and expense and with legal counsel approved by FBA, which approval shall not be unreasonably withheld. This duty to defend exists regardless of any ultimate liability of BUILDER. Such defense obligation shall arise immediately upon presentation of a Claim by any person and written notice of such Claim being given by an Indemnified Party in writing to BUILDER. BUILDER's indemnification obligation hereunder shall survive the expiration or

termination of this Agreement until such time as action against the Indemnified Parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations or statute of repose. BUILDER's liability for indemnification hereunder is in addition to any liability BUILDER may have to FBA for a breach by BUILDER of any of the provisions of this Agreement. This duty to defend includes attorney fees for defense and if the Indemnified party is required to secure an attorney to enforce this provision the attorney fees incurred by the Indemnified party in doing so.

BUILDER's insurance carrier under the insurance stated above may perform this duty for BUILDER but such action shall not relieve BUILDER's ultimate responsibility.

**8.5 NO RIGHT TO REMUNERATION FROM FBA.** BUILDER acknowledges that FBA may receive monies in conjunction with the FLATHEAD VALLEY PARADE OF HOMES®, including but not limited to, the monies received from the FLATHEAD VALLEY PARADE OF HOMES® Magazine, advertising, ticket sales, exhibit rentals, displays, sponsors, host packages, etc., (the FLATHEAD VALLEY PARADE OF HOMES® "Proceeds"). BUILDER acknowledges and agrees that FBA has the sole right, title and interest to the monies and Proceeds. BUILDER agrees that he or his company will not receive and does not have claim to any of the monies or Proceeds. Further BUILDER agrees that he or his company will not receive any financial remuneration in regards to photographs or video taken by the FBA pursuant to this Agreement and authorizes FBA to take such photographs or videos as it deems appropriate.

#### **8.6 RULE ENFORCEMENT.**

8.6.1 FBA's parade committee members will be visiting all Parade Homes, unannounced, during PARADE OF HOMES hours and will enforce the Parade Rules and Regulations, as outlined in this and the Exhibitor's agreements. FBA Parade committee co-chair or executive committee will give telephonic notice should they determine a violation has occurred.

8.6.2 If the violation is remedied within 2 hours of notification, there shall be no further penalty. Should the remedy not occur within that time or there be a violation of any other provision of this Agreement, the Board of Directors after hearing may impose such penalty as set forth in the specific provision violated or if no penalty is stated a penalty not to exceed that stated below.

8.6.3 The intent of this agreement is that the BUILDER will have a successful Parade. If for any reason the BUILDER abuses this intent or the spirit of the Parade is not followed, FBA and its Board of Directors may take disciplinary action with BUILDER to correct any problems. If BUILDER does not comply with all of the requirements of the PARADE, FBA may terminate this AGREEMENT, exclude BUILDER from the PARADE and/or future PARADEs, recover from BUILDER all fees and costs incurred by FBA, forfeit the BUILDER's deposit and may proceed with a revocation of membership to the FBA.

8.6.4 Determinations by the Board of Directors are final and not appealable.

### **9. MARKETING**

**9.1 MEDIA AND MARKETING.** Before or during the Parade no live radio or television remotes will be permitted at Parade Homes except those initiated and authorized by the FBA. FBA will furnish the following:

1. Media recognition in the form of Radio, Web, Billboard, TV and/or Print exposure as determined by FBA.
2. Two full-page in the PARADE OF HOMES® Magazine.
3. Feature Builder and Home profile on FBA Website
4. Professional Video created for virtual tour of home. Video will be coordinated by FBA.

9.2 **PRE-PARADE.** All signs, open house promotions, private announcements, advance publicity, advance print or advertising media of any kind which may indicate that a Home will be included in the FLATHEAD VALLEY PARADE OF HOMES® must be reviewed and approved by the FBA. This rule is critical in preserving the marketability and credibility of the FLATHEAD VALLEY PARADE OF HOMES®. This policy also protects workmen finishing the homes from interference by the public.

9.3 **PARADE BUILDER TICKETS.** FBA will provide tickets which will be advertised and available for advanced-sale at FBA designated locations. Each Parade BUILDER will be given ten (10) complimentary FLATHEAD VALLEY PARADE OF HOMES® tickets and may purchase additional tickets at a price set by the FBA through the duration of the FLATHEAD VALLEY PARADE OF HOMES®.

#### 9.4 PARADE MAGAZINES.

9.4.1 **GENERAL MAGAZINE AGREEMENTS:** FBA will provide BUILDER with Parade Magazines to give to those individuals who request them at the Parade Homes. Magazines will be provided to the BUILDER prior to the Parade opening. BUILDER is responsible for the accuracy of content on the pages representing the BUILDER and property. BUILDER will meet deadlines set by FBA for submittal, review and approval of content. BUILDER will sign and date content proof prior to print and be responsible for content released to the FLATHEAD VALLEY PARADE OF HOMES®. Any errors or omissions concerning BUILDER Home entry will be limited to a maximum refund of entry fee and will be determined by FBA. BUILDER agrees to call any errors to the attention of FBA in writing by 4 p.m. Tuesday, July 23<sup>rd</sup>, 2024. Materials to be submitted by BUILDER include but are not limited to:

- Written description of the Home including costs and price. Note: The published cost “price” of Home excluding lot and estimated market value including lot. Only categories for price range will be made public, not the actual price.
- High quality professional digital photo and/or rendering of Home
- “Clean” Floor plan - free of extraneous lines
- Directions from the nearest major roadway
- List of subcontractors and suppliers used for the Home.
- Electronic print high quality version of BUILDER’s logo

9.4.2 **PRICING & PRICE DISCREPANCIES.** BUILDER commits the price in the PARADE OF HOMES magazine is the reproducible price of the Home excluding the lot.

#### 10. ADDITIONAL BENEFITS TO BUILDER

10.1 **VENDOR DISCOUNTS/FREE UPGRADES.** Certain discounts or free upgrades may be offered by vendors and/or suppliers to persons participating in the FLATHEAD VALLEY PARADE OF HOMES®. It is agreed though that this Agreement shall not be conditioned on any such discounts or free upgrades. The Parties acknowledge that such discounts or free upgrades are not guaranteed and vary greatly depending on house size, location, BUILDER, feature quality and other factors. The BUILDER agrees that FBA shall have no liability to the

BUILDER in connection with such discounts or free upgrades.

## **10.2 AWARDS**

**10.2.1 JUDGING.** The FLATHEAD VALLEY PARADE OF HOMES® will hold judging for each participating home, to enhance the event and to give constructive feedback to BUILDERS. The FLATHEAD VALLEY PARADE OF HOMES® will not be held liable for the results of the Judging and the awarding of the awards.

**10.2.2 BUILDER AWARDS.** Award winners including but not limited to “Judge’s Choice” and “People’s Choice” award winners must be a member of the FBA in good standing. FBA has the right to revoke any award if BUILDER is found in violation of this Agreement.

**10.2.3 GRAND PRIZE AND DOOR PRIZES.** The FBA is responsible for the Parade Grand Prize. BUILDER may, at BUILDER’s discretion, elect to conduct BUILDER Door Prize Contests individually in BUILDER’s Home. BUILDER is solely responsible for all areas of production including signage, ballots, and promotion of BUILDER Door Prize Contests. BUILDER may coordinate BUILDER Door Prize Contest with FBA for the purposes of including in marketing efforts where possible, as deemed by FBA.

## **11. MISCELLANEOUS PROVISIONS**

**11.1 CANCELLATION OF FLATHEAD VALLEY PARADE OF HOMES®.** The Parties acknowledge that the FLATHEAD VALLEY PARADE OF HOMES® may be canceled for unforeseen reasons. FBA reserves the right to cancel the FLATHEAD VALLEY PARADE OF HOMES®. In the event the FLATHEAD VALLEY PARADE OF HOMES® is canceled for any reason, FBA agrees to return the BUILDER’s fees paid by the BUILDER to FBA. Cancellation of the FLATHEAD VALLEY PARADE OF HOMES® shall not constitute a breach of this contract. For 2020 Parade of Homes: In the event the physical Parade of Homes may be cancelled, the FBA will outline costs specific to the virtual/video tour of homes and related marketing and coordination costs. The FBA agrees to return the portion of fees related to the physical tour, but will keep the portion of fees related to the virtual tour and all related planning and marketing activities. These costs will be provided to the builders at the mandatory builder meetings.

**11.2. Severability.** In the event that any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

**11.3. Entire Agreement.** This Agreement sets forth the entire agreement between the Parties and supersedes all prior agreements, whether written or oral. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by the Parties to this Agreement.

**11.4 Non-assignability.** This Agreement shall not be assigned by either party except as provided herein.

**11.5. Notices.** All notices given under any of the provisions of this Agreement must be in writing and shall be deemed to have been given either: (a) when delivered in person to the recipient; or (b) upon deposit in the United States Mail, either registered or certified, return receipt requested, postage prepaid, addressed to the Party or person intended at the address listed above, unless such Party informs the other Party in writing of a different address, and then to that address.

**11.6. Governing Law, Jurisdiction, and Venue.** The laws of the State of Montana will govern the validity, performance, and the enforcement of this Agreement. Jurisdiction and



venue for the enforcement of this Agreement shall be found exclusively in the courts of the Eleventh Judicial District Court, Flathead County, State of Montana.

11.7. **Modification and Amendment.** This Agreement may be amended or modified only by an instrument in writing signed by all the Parties hereto.

11.8 **Time.** Time is of the essence of each term, provision, condition, and covenant of this Agreement.

11.9 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

11.10 **Waiver.** Unless otherwise indicated herein, failure by any Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall not constitute a waiver of any such breach or any other covenant, agreement, term, or condition. Any Party, by notice delivered in the manner provided in this Agreement, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of any other Party. No waiver shall affect or alter the remainder of this Agreement, but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach. To be effective, any waiver must be signed by all Parties hereto.

11.11 **NO GUARANTEE.** Nothing in this Agreement and nothing in FBA's comments or statements will be construed as a promise or guarantee about the outcome of the PARADE. FBA makes no such promises or guarantees.

**12. COSTS AND EXPENSES OF ENFORCEMENT.** Any failure by BUILDER to pay the fees or other FBA charges promptly when due, or to comply with any other terms or conditions of this Agreement shall, at the option of the FBA, immediately terminate this Agreement and the BUILDER's entry in the PARADE, and forfeit all rights of BUILDER under this Agreement. In the event of the failure of any Party hereto to comply with any provisions of this Participation Agreement, the defaulting Party shall pay any and all costs and expenses, including reasonable attorneys' fees arising out of or resulting from such default (including any incurred in connection with any appeal), incurred by the injured Party or FBA in enforcing its rights and remedies, whether such right or remedy is pursued by filing a lawsuit or otherwise.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by a representative duly authorized as of the date first above set forth.

I have read and do hereby agree to abide by the rules and regulations as set forth herein above for the 2024 FLATHEAD VALLEY PARADE OF HOMES® by the FBA. I understand that failure to comply subjects me to forfeiture of any and all privileges (including becoming ineligible to participate in future Parades and/or probation or revocation of FBA membership), and in the event of any misunderstanding of this Agreement, agree to accept the decisions of the FBA as final and binding. I understand my sole remedy for any breach of this Agreement by FBA is a refund of my deposit and fees.

**BUILDER:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Builder Company Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Authorized Signature

**FLATHEAD BUILDING ASSOCIATION:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date