

After Recording Return To:  
Donald R. Murray  
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Kalispell, MT 59903-1178



Paula Robinson, Flathead County MT by NC

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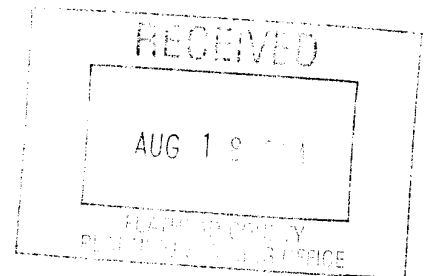
# AMENDED and RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS and RESERVATIONS

FOR

## WHITEFISH HILLS FOREST

A RESIDENTIAL SUBDIVISION NEAR WHITEFISH,  
MONTANA

August 1, 2014



AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATIONS FOR WHITEFISH HILLS FOREST

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# **AMENDED and RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS and RESERVATIONS**

## **WHITEFISH HILLS FOREST**

### **A RESIDENTIAL SUBDIVISION NEAR WHITEFISH, MONTANA**

**August 1, 2014**

**THIS DECLARATION** of Covenants, Conditions, Restrictions and Reservations (herein referred to as either the "*Declaration*" or the "Covenants") is hereby made and shall be effective as of the 1<sup>st</sup> day of August, 2014, by Whitefish Hills Forest, LLC, a Montana Limited Liability Company (herein referred to as either the "Declarant" or the "Developer"), which is the owner and developer of the Whitefish Hills Forest property and the residential subdivision into which it is being developed and which shall be known as Whitefish Hills Forest.

### **RECITALS:**

**WHEREAS**, the undersigned Declarant is the owner of the Whitefish Hills Forest property and the developer of the Whitefish Hills Forest subdivision. Whitefish Hills Forest is a residential subdivision located south and west of the City of Whitefish, in Flathead County, Montana; and

**WHEREAS**, the Declarant hereby subjects said real property, which is particularly described in Article I, below, to the covenants, conditions, restrictions, reservations and other limitations and requirements set forth in this *Declaration*, each and all of which are intended for the benefit of the Whitefish Hills Forest subdivision and



each owner of property in the subdivision. These covenants, conditions, restrictions and reservations shall inure to the benefit of and pass with said real property and each parcel thereof, and shall apply to all owners of property within the subdivision and to their successors in title; and

**WHEREAS**, the property which comprises the subdivision known as Whitefish Hills Forest and which is hereby subjected to this *Declaration* is a parcel of real property consisting of approximately five hundred and forty (540) acres located in Flathead County, Montana, and which is particularly described in Article I of this *Declaration*. It is variously referred to herein as "Whitefish Hills Forest" or the "Whitefish Hills Forest property" or simply the "subdivision" or the "property," as the context suggests; and

**WHEREAS**, Phases 2 through 5 of the Whitefish Hills Forest subdivision received preliminary plat approval from the board of county commissioners for Flathead County, Montana on October 17, 2013; Phase 1 of Whitefish Hills Forest was granted final plat approval by the board of county commissioners for Flathead County, Montana on August 21, 2006; and

**WHEREAS**, this *Declaration* amends and restates the earlier *Declaration* to which the Whitefish Hills Forest property was subjected at the time it was annexed to the Whitefish Hills subdivision (*Amended Declaration of Covenants, Conditions, Restrictions and Reservations* dated April 1, 2001, and recorded on May 10, 2001, under Reception No. 200113016400, records of Flathead County, Montana) and except as necessary to carry out the terms of this *Declaration* replaces that earlier *Declaration* in its entirety.

## DECLARATION

**NOW THEREFORE**, the Declarant does hereby establish these covenants, conditions, restrictions and reservations that will govern the Whitefish Hills Forest subdivision and subject to which all of the Lots (as defined below) within the subdivision shall be owned, occupied, improved and sold, and declares that said Lots are and shall be held, transferred, sold and conveyed subject to the covenants, conditions, restrictions and reservations set forth herein and which together comprise this *Declaration*. All of the said covenants, conditions, restrictions and reservations shall run with the land and shall be binding upon all owners of Lots located within Whitefish Hills Forest and the successors in title to such Lots.



## PREFACE RELATIONSHIP TO WHITEFISH HILLS

Whitefish Hills Forest is contiguous to, and lies to the south of, the residential subdivision known as Whitefish Hills, a well-established residential subdivision consisting of four phases, referred to as the Original Phase and Phases I, II and III. The developer of Whitefish Hills Forest was also involved in the development of Whitefish Hills and accordingly, there will be many similarities between the two subdivisions both in terms of their physical and topographical elements, and also in the documents that pertain to their development and governance. Due to their similarities and close geographic proximity, the two subdivisions will share a number of elements and amenities and Whitefish Hills Forest will share in the cost of maintaining and operating those shared elements and amenities with Whitefish Hills. There are provisions in this *Declaration* and in the other governing documents for Whitefish Hills Forest that address this interrelationship. There are correlative provisions in the governing documents for Whitefish Hills. The Whitefish Hills subdivision, in order to distinguish it from the Whitefish Hills Forest subdivision, is sometimes referred to as "Whitefish Hills Proper."

## ARTICLE I PROPERTY

The Whitefish Hills Forest property which is and shall be held, transferred, sold and conveyed subject to this *Declaration* is located in Flathead County, Montana, and is more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE  
INCORPORATED HEREIN AND MADE A PART HEREOF

## ARTICLE II DEFINITIONS

The following terms, as used in this *Declaration*, are defined as follows:

**Section 2.1. Act** means the *Montana Nonprofit Corporation Act* as set forth in Section 35-2-113, *Montana Code Annotated*, and as it may be amended from time to time.

**Section 2.2. AERC.** See **Architectural and Environmental Review Committee.**



**Section 2.3. Annexed Property** means property other than the Whitefish Hills Forest property that may from time to time be annexed to Whitefish Hills Forest in the manner provided in Article VIII of this *Declaration*.

**Section 2.4. Architectural and Environmental Review Committee or AERC** means the committee appointed by the Board of Directors of the Whitefish Hills Homeowners Association the function of which is to review plans, specifications, designs and locations of site work, structures, and other improvements to be placed, carried out, or constructed on a Lot. The AERC shall also have the power and authority to adopt rules and requirements for the subdivision, and it shall have the power and authority to enforce those rules and requirements and to enforce the provisions of this *Declaration* as further provided for in Article IV.

**Section 2.5. Articles** means the *Articles of Incorporation* of Whitefish Hills Forest Homeowners Association, Inc., a Montana nonprofit corporation, which *Articles of Incorporation* have been filed with the Secretary of State of Montana.

**Section 2.6. Assessment(s)** means the Annual, Special, and Default Assessments levied pursuant to Article VII.

**Section 2.7. Association** means the Whitefish Hills Forest Homeowners Association, Inc., a Montana nonprofit corporation made up of Members who are the Owners of Lots in Whitefish Hills Forest.

**Section 2.8. Board of Directors or Board or Directors** means the duly elected and qualified members of the Board of Directors of the Whitefish Hills Forest Homeowners Association, Inc.

**Section 2.9. Bylaws** means the *Bylaws* of the Whitefish Hills Forest Homeowners Association, Inc., which provide for the governance of the Association, and the maintenance, preservation and operation of Whitefish Hills Forest and its amenities, as those *Bylaws* may be amended or restated from time to time.

**Section 2.10. Common Facilities** means those areas and facilities which have been or are to be improved, repaired or maintained by the Association for the benefit of the Owners as defined and set forth in this *Declaration*, including without limitation (i) the access roads and utility easements, both within and outside the subdivision, (ii) the recreational trail easements, (iii) the gates and entrances to the subdivision, (iv) the subdivision's parks and common areas, (v) the tanker recharge facility near the south entrance at KM Ranch Road, and (vi) all other easements, driveways, roads, parking lots, common areas and other commonly held property within Whitefish Hills Forest, and all landscaping on or serving the foregoing facilities, and all fixtures and appurtenances used therewith or attached thereto, and all tangible and intangible personal property at



any time owned or controlled by the Association for the common use and benefit of the Owners.

**Section 2.11. Declarant** means Whitefish Hills Forest, LLC, which is a Montana limited liability company, and its successors and assigns.

**Section 2.12. Declaration** means this *Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservations* for Whitefish Hills Forest, as it may from time to time be amended, supplemented, modified or restated.

**Section 2.13. Directors.** See **Board of Directors**.

**Section 2.14. Open**

**Section 2.15. Expansion Property** means such other real property now owned or in the future acquired by the **Declarant** or its successors and assigns, which is annexed to, or which is otherwise added to or affiliated with Whitefish Hills Forest by the **Declarant**.

**Section 2.16. First Mortgage** means any recorded mortgage that is not subject to any prior lien or encumbrance, except for liens for taxes or other liens that are given specific priority by statute.

**Section 2.17. First Mortgagee** means the holder of record of a First Mortgage.

**Section 2.18. Guidelines** means design and improvement guidelines which may, from time to time, be adopted and modified by the **AERC** setting forth procedures for the review of plans, as well as standards, criteria, and requirements which must be adhered to in proposed projects and improvements within Whitefish Hills Forest.

**Section 2.19. Lot** means each tract, parcel, or lot within the **Whitefish Hills Forest Property**, as shown on the recorded plats for the subdivision, and any other tract, parcel or lot created from an existing tract, parcel or lot, including any such tract, parcel or lot within any **Expansion Property** as defined in Section 2.15.

**Section 2.20. Member(s)** means those persons or entities entitled to membership in the Whitefish Hills Forest Homeowners Association, Inc., by virtue of being an Owner of a Lot in Whitefish Hills Forest.

**Section 2.21. Onsite Roadways** means the roadways providing access to and throughout the subdivision. Presently, the Onsite Roadways include Whitefish Ranch Road, Whitefish Ranch Court, Whitefish Forest Loop, Whitefish Hills Drive, as well as the primary access roads serving the subdivision; on the north, a network of two county



roads, Stelle Lane and Big Ravine Drive which are not presently maintained by Flathead County, but are maintained by Whitefish Hills Proper and Whitefish Hills Forest.

**Section 2.22. Owner** means the record owner of a fee simple title to any Lot within Whitefish Hills Forest, and shall include buyers under a contract for deed (notice of which is recorded with the Flathead County Clerk and Recorder), but not contract for deed sellers. Owner shall also mean record owners and contract for deed buyers of any **Expansion Property** as defined in Section 2.15.

**Section 2.23. Period of Declarant Control** means the period of time beginning with the earlier of the recording of this *Declaration* or the preliminary approval of the subdivision by the Board of County Commissioners for Flathead County and lasting until the Declarant has sold ninety percent (90%) of the Lots in the subdivision.

**Section 2.24. Property** means the **Whitefish Hills Forest Property** or **Whitefish Hills Forest**.

**Section 2.25. Rules and Regulations** means the rules and regulations governing and regulating activity within the subdivision adopted by the Board of Directors from time to time as provided for in Section 6.6.

**Section 2.26. Screened from view** means, with respect to any given object on a Lot, that the object is screened by a fence, hedge, other decorative improvement or native vegetation, such that the object is not or would not be visible to a person six (6) feet tall, standing on any part of any adjacent Lot at an elevation no greater than the elevation of the base of the object being viewed.

**Section 2.27. Shared Amenities** means those certain roads and facilities located primarily in Whitefish Hills Proper that the residents of Whitefish Hills Forest have the right to use and in the maintenance of which the residents of Whitefish Hills Forest will share. The **Shared Amenities** are listed in Section 10.1 of this *Declaration*.

**Section 2.28. Whitefish Hills Forest Homeowners Association, Inc.** See **Association**.

**Section 2.29. Whitefish Hills Forest** or **Whitefish Hills Forest Property** means the real property described in Article I, above.

### ARTICLE III DEVELOPMENT PHILOSOPHY



**Section 3.1. Purpose of Declaration.** The Whitefish Hills Forest property is being subjected to the covenants, conditions, restrictions and reservations set forth in this *Declaration* in order to ensure the most appropriate development and improvement of the subdivision and each Lot within the subdivision, to preserve and protect the natural beauty and rural, timbered setting of the Property, to guard against the construction of buildings from inappropriate or unsuitable materials, and to foster a development concept that will make Whitefish Hills Forest a distinctive and desirable residential community compatible with Whitefish Hills Proper and distinguished from other residential developments in the Flathead Valley. Whitefish Hills Forest is envisioned to become a diverse yet compatible series of residential lots situated in a unified landscape setting, preserving the native woodland character of the Property and its wildlife habitat and migration corridors. This concept will be enhanced through comprehensive design, embodying the best qualities and techniques of site planning, engineering, architecture, landscape architecture and overall design. Although independent in its governance from Whitefish Hills Proper, the subdivision is an extension of, and shall be compatible with, Whitefish Hills Proper.

## ARTICLE IV ARCHITECTURAL AND ENVIRONMENTAL REVIEW

**Section 4.1. Architectural and Environmental Review Committee.** The Architectural and Environmental Review Committee (“AERC” or the “Committee”) shall consist of at least three (3) members appointed by the Board of Directors. During the Period of Declarant Control, the Declarant shall appoint the members of the Committee. The members so appointed by the Declarant need not be Members of the Association. After the Period of Declarant Control, a majority of the members of the Committee must be Members of the Association. The Board, in its discretion, may require that at least one (1) of the members have professional qualifications in the area of architecture, design or land planning, or determine that a person having those qualifications be retained from time to time as a consultant to the Committee. The primary duties and functions of the Committee are as set forth herein.

**Section 4.2. Architectural and Environmental Control.** No site alterations, including roads, driveways, utility installation, clearing or thinning shall be undertaken, and no building, fence, wall or other structure shall be commenced, erected or maintained upon any Lot, nor shall any addition or change or alteration to any such building, fence, wall or other structure be made until the plans, specifications, and proposed construction schedule have been submitted to and approved by the Committee. The plans and specifications shall be submitted and reviewed in accordance with **Section 4.3** and **Section 4.4** below, and shall show the nature, kind, shape, height, materials and location of the proposed alteration or structure, including proposed landscaping and exterior lighting. The Committee will review all plans with an





eye toward harmony of external design and location in relation to surrounding structures and topography, native vegetation and overall compatibility with surroundings and the subdivision as a whole.

**Section 4.3. Plan Review Process.** In order to ensure that the design standards for Whitefish Hills Forest contained in this *Declaration* are achieved, a submission of certain plans will be required. Plan submissions will also be required for significant revisions, alterations or additions to approved or existing improvements. Each plan submission will require two (2) sets of plans containing the specific information described below. The plan submission for each new improvement or development and each significant revision, alteration, addition or change of use shall be accompanied by a plan review fee as may be set from time to time by the AERC. All submitted plans will be reviewed by the AERC for acceptability of design and compliance with this *Declaration* and compatibility with the development philosophy of Whitefish Hills Forest. Upon completion of review by the AERC, one set of plans will be returned to the applicant along with a letter summarizing the Committee's comments, recommendations and requirements. The returned plans will be marked "APPROVED," "APPROVED SUBJECT TO CONDITIONS" or "NOT APPROVED." Approvals are valid for two (2) years from the date of the written notice of approval. If construction is not commenced within such two (2) year period, plans must be resubmitted and a new approval secured.

**Section 4.4. Required Plans.** At a minimum, the following plans must be submitted to the AERC:

- a) A site plan to an appropriate scale depicting the entire Lot and the relative location of all proposed development within the Lot, including roads, driveways, fences, pastures, ponds, structures, clearing, thinning and utilities.
- b) Site and landscape plans to a scale of 1" = 20' - 0" for all site disturbances with consideration given to vegetation, pedestrian and equestrian circulation, grading, drainage, exterior lighting, fences, driveways, parking and phasing.
- c) Construction plans to a scale of 1/8 inch for all structures with consideration given to site utilization, engineering, architectural design and phasing.

**Section 4.5. Adoption of Guidelines.** The AERC shall have authority to adopt and publish Guidelines setting forth the procedures and criteria for review of structures and other site improvements or modifications so long as such Guidelines are not inconsistent with and are no less restrictive than the provisions of this *Declaration*.

**Section 4.6. AERC's Response to Required Plans.** The Committee shall have thirty (30) days within which to complete its review and approve, modify or reject a proposal once a complete set of plans has been submitted along with the requisite plan review fee. However, the first day of the thirty (30) day review period will not be deemed to begin until the first day after any and all required plans have been received **and** any fees associated with the review process paid. No plans will be accepted, reviewed, approved or otherwise considered unless all Assessments against the Lot for which the approval is sought have been paid. Any approval given shall be deemed contingent upon all Assessments being paid during the time period that the project as approved is being carried out. In the event the Committee fails to respond to a proposal within such thirty (30) day period, the Owner shall so notify the Committee, which shall then have ten (10) days from the date of the notice to act. If the Committee does not act within such ten (10) day notice period, the Owner shall be permitted to commence construction in accordance with the submitted plans, but any deviation from such plans, which in the judgment of the Committee is a significant deviation, shall be modified or corrected to conform to the plans as submitted.

**Section 4.7. Continuing Responsibility.** The AERC shall have a continuing role in the approval or disapproval of proposed changes from the original design and construction, including without limitation, exterior remodeling, changes of color, exterior lighting, provision for wood storage, exterior clotheslines, recreational equipment (swimming pools, swing sets, basketball goals, tennis courts, etc.) and exterior pet, livestock and animal facilities. No such changes or additions will be permitted unless approved by the AERC, which may, in its discretion, waive the requirement that plans and specifications be submitted for such changes.

**Section 4.8. Committee Enforcement.** If the Committee, upon its own inspection or upon receiving a complaint, determines that any Owner is in violation of the Committee's standards or guidelines, or has failed to properly maintain such Owner's Lot or any permanent improvement thereon, including necessary repairs, or has constructed or made any change to any improvement not in conformance with an approved plan, or is otherwise in violation of this *Declaration*, the Committee shall notify the Owner in writing. Such notice shall contain a statement of the nature of the nonconformity or violation and the steps needed to remedy it. If such remedial steps are not taken within a reasonable time as determined by the Committee, the Committee shall notify the Board of Directors which may itself, after written notice to the Owner and failure of such Owner to comply, undertake remedial measures and charge the Owner an Assessment for any sums expended by it having to do so. In the event the Board of Directors does not undertake such remedial action, the Committee may do so. As an alternative to the Board of Directors or Committee undertaking remedial action, the Board or Committee are authorized to obtain an estimate of costs and fees associated with undertaking remedial action and, rather than the Board or Committee actually undertaking such remedial action, assess a lien against the Lot for the estimated cost of

such remedial action. Any such Assessment shall become a lien against the Lot so assessed and the personal obligation of the Owner to the same extent as those Assessment liens described in Article VII, herein.

The AERC or its members shall have the right, upon reasonable advance notice to the Owner, to enter any Lot to determine if there has been compliance with this *Declaration* or any approved plans, to undertake remedial action, or to view and inspect the property with its consultants to ascertain the estimated cost for remediation.

## **ARTICLE V PROTECTIVE COVENANTS and DEVELOPMENT AND LAND USE STANDARDS**

**Section 5.1. Land Use.** The Property may be used only for single family residential purposes and no structure shall be erected, placed or permitted to remain on a Lot other than a single family private residence and related buildings such as barns, stables, shops, garages, guest houses or caretaker facilities incidental to the residential use of the Lot. There shall be no commercial use of the property and no trade, craft, business, professional, religious, educational or other commercial activity may be conducted on any Lot. Provided, however, those businesses or professions carried on solely by family members and conducted entirely within residential structures shall be permissible. No traffic may be generated by such home activities in greater volume than would normally be associated with a residential dwelling. No equipment or process shall be used which creates visual or audible interference with any radio, television or telephone receivers off the premises or which causes fluctuation in electrical line voltage to other parts of the subdivision. Occasional functions such as riding clinics, charity events and similar gatherings may be permitted upon approval of the Association's Board of Directors.

**Section 5.2. Subdivision of Lots.** The further subdivision of Lots is permissible only if the division of the Lot can be accomplished in compliance with the applicable Flathead County zoning regulations. The subdivision of Lots into lots smaller than 10 acres is not permitted (and this shall be the case even in the event the zoning is changed to allow lots smaller than 10 acres).

**Section 5.3. Building Sites.** No Lot shall have erected upon it more than one dwelling house together with permitted outbuildings.

**Section 5.4. Building Standards.** The following building and construction standards shall be followed for all buildings on the Lots:

- a) Each home shall contain not less than two thousand square feet (2000 sq. ft.) of finished living space. For purposes of this paragraph, porches,

balconies, decks and garages shall not be considered part of the living space.

- b) No structure of any kind, and particularly those commonly known as “mobile home,” “modular home,” “trailer” or other prefabricated structure, designed to be hauled or moved on wheels, or of “boxed,” “sheet metal” or “A-frame” construction, shall be built or moved onto any Lot for any purpose except as allowed in Section 5.15, below. No basement, garage, barn or other outbuilding erected or placed on any Lot shall, at any time, be allowed or used as a residence, either temporarily or permanently, except as otherwise permitted herein.
- c) All buildings shall be permanent in nature and no temporary buildings or partly finished buildings or structures shall be erected or placed upon a Lot. Only new materials may be used. However, used brick, beams and the like, on any integral part of the architecture of the building, may be allowed. All construction shall first be reviewed and approved pursuant to the provisions of Article IV as set forth above. All buildings constructed on a Lot shall be constructed in harmony with the location, terrain and environment of the premises so as not to be unsightly, inappropriate or inconsistent with the development philosophy of the subdivision.
- d) All buildings, including barns, stables, garages, tool sheds and other structures shall be in keeping with the architecture of the other buildings located on the Lot, kept in good repair and appearance, and maintained in a sanitary condition with strict fly and pest control measures observed.
- e) All construction, once begun, shall be expeditiously completed as to exterior finish including siding and/or masonry, paint and roof. The construction area around each building constructed shall be at least rough-graded prior to occupancy. All construction must be completed and building debris removed within the time frame set out in the approved construction schedule. The dwelling shall not be occupied until such time as the above work is completed including the installation and completion of all plumbing fixtures and utilities.
- f) No building on any Lot shall have a roof or exterior siding that is silver or metallic colored, shiny or reflective. Only class A or B roofing materials, as rated by the National Fire Protection Association, shall be allowed on any structure. Wood shake roofs, because of their flammability, are prohibited.

- g) Each structure, once constructed on a Lot, shall be kept in the same condition as at the time of its initial construction, excepting normal wear and tear. All structures (including fences) shall be preserved and of pleasant appearance by maintaining paint, stain or sealer as needed. If any structure is damaged in any way, the Owner shall exercise due diligence to rebuild, repair or restore the structure to its appearance and condition prior to the casualty. Such repair or reconstruction shall be completed within nine (9) months of the casualty, or such longer time as may be approved by the AERC for good cause shown.
- h) No portion of any building shall be more than thirty-five (35) feet high as measured from the average finished grade of the building site unless the Committee, for good cause shown and in the exercise of its discretion, should allow a taller structure. In the case of any Owner requesting to exceed the building height limit, it shall be the burden of such requesting Owner to show there will be no adverse impact on any other Owner.
- i) Each Lot Owner shall be responsible for creating and maintaining a wild fire "defensible space" around primary structures, as provided in the *Flathead County Subdivision Regulations* pertaining to living in a moderate or high wildfire hazard area. This responsibility is not intended to allow, nor will it justify, any activity such as clear-cutting, but rather authorizes the thinning or removal of vegetation to meet the fire safety and defensible space fire clearance requirements of the *Flathead County Subdivision Regulations*.
- j) All dwellings shall have house numbers that are visible from the Onsite Roadway serving the Lot either at the driveway entrance or on the house.
- k) All electrical, telephone, cable TV and other utility lines shall be installed underground.
- l) If construction activity on any Lot should cause damage to the Onsite Roadways, the cost of repair of such roadway shall be borne solely by the Owner of said Lot. Once construction or site work on any Lot is started, the Owner shall take measures to ensure that no gravel, clay or other debris is washed or carried onto the Onsite Roadways. Prior to completion of construction, the Owner shall install on the Lot's driveway an asphalt apron extending into the Lot at least thirty-five (35) feet from where the driveway meets the Onsite Roadway. The length of the apron may be increased (or decreased) in the discretion of the Committee as required to protect the Onsite Roadways.

- m) Due to the rural, wooded character of the Property and the distance of the subdivision from emergency responders, it is strongly recommended by the Whitefish Volunteer Fire Department and by the Declarant that all occupied structures have installed at the time of initial construction comprehensive, structure-wide sprinkler systems to be operative in the event of a structure fire.
- n) The Declarant reserves the right to utilize one or more Lots owned by the Declarant, provided such Lots are contiguous, to serve as a maintenance hub or staging area for maintenance both inside and outside of the subdivision. As long as said Lots are being utilized by the Declarant or the Association as a staging area or maintenance hub for subdivision maintenance, said Lots and the improvements located thereon, shall not be deemed to be in violation of this *Declaration*. However, in the event said Lots are no longer owned by the Declarant or the Association, or are no longer utilized as a base or staging area for property maintenance, the use of said Lots, and the improvements thereon, shall, within a reasonable period of time, be brought into compliance with this *Declaration*.

**Section 5.5. Seeding, Planting and Weed Control.** A Lot Owner is responsible for ensuring that the Lot is maintained in a neat and weed-free condition at all times prior to, during, and after construction thereon. Noxious weeds shall be controlled and destroyed on a regular basis to prevent them from reaching seed stage. All Owners must comply with Flathead County noxious weed control requirements. Whenever a structure is built, or ground is otherwise disturbed on any Lot, the Owner of said Lot shall, promptly upon completion of construction or upon completion of the action causing the ground disturbance, plant a ground cover or other vegetation to restore the ground so disturbed by said construction or other disturbance. Such revegetation of disturbed soil shall be commenced not later than thirty (30) days after completion of construction, or if construction is completed after planting season ends in the fall, within thirty (30) days of the beginning of planting season the following spring.

**Section 5.6. Signs.** No signs shall be placed on any Lot except name or address plates (which may be illuminated by approved indirect lighting), and one unlighted sign advertising the sale of a Lot. The AERC shall adopt guidelines for the size and appearance of signs offering or advertising the sale of Lots in the subdivision.

**Section 5.7. Pets and Livestock.** No animals or livestock of any kind other than horses, llamas, dogs, cats, birds or other small indoor pets shall be kept or maintained on any Lot for any purpose. All animals permitted by this section shall be contained within the boundaries of their owner's Lot to prevent the disturbance of wildlife or domestic livestock. Any animal that barks, howls, bites, roams at large or chases vehicles shall not be kept on any Lot at any time.

With the exception of the Lots identified in the following paragraph, horses and llamas are allowed to the extent of three animals on each ten (10) acre Lot, and then only to the extent that the Lot shall not be overgrazed. All animals and pets maintained on any Lot must not create or cause a violation of any of the covenants contained herein, such as an annoyance or nuisance or disturbance to the neighborhood or the Owners of any of the other Lots.

Due to their environmental sensitivity and the constraints of topography and vegetation, livestock of any kind, including horses and llamas, is *not* allowed on the following eighteen Lots: 15-19, 26, 34-40, and 43-47, inclusive.

**Section 5.8. Overgrazing.** While horses are allowed and welcomed in the subdivision, overgrazing is of special concern to the AERC and the Association. Any grazing or other livestock activity that detracts from the overall aesthetic qualities of the subdivision or encourages the growth of noxious weeds may be curtailed or otherwise appropriately addressed by the AERC. The AERC may require a plan for the restoration of damaged areas as well as for the mitigation of future impacts from the presence of livestock on the Lots. The AERC and the Association shall have broad discretion in this area of special concern.

**Section 5.9. Lot Appearance, Trash and Garbage.** Except as provided herein, no part of any Lot shall be used as a dumping ground or used to place or store rubbish, trash, garbage, inoperable or junk cars or parts thereof or other unsightly objects. Each Lot Owner shall avoid the accumulation of such refuse or other material prohibited by these Covenants. All garbage cans shall either be sunk in the ground to ground line, placed in an enclosure completely Screened from View or kept in an enclosed structure. Any garbage receptacle not kept in an enclosed structure shall be made "bear proof" in accordance with specifications promulgated by the National Park Service for Glacier National Park.

**Section 5.10. Sewer Systems.** Only individual sewage disposal systems, designed, located and constructed in accordance with the requirements, standards and recommendations of the Montana State Department of Environmental Quality and the Flathead County Sanitation Department shall be permitted on the Lots. Prior to the initial residential construction or site preparation, the Lot Owner shall secure all requisite permits from Flathead County and/or the State of Montana.

**Section 5.11. Nuisances.** No noxious or offensive activity shall be carried on or permitted upon any of the Lots, nor shall anything be done on any Lot that may be an annoyance or nuisance to other Lot Owners. By way of illustration, and not of limitation, the discharge of firearms and driving of motorcycles or snowmobiles on the Lots may constitute a nuisance within the meaning hereof and, at the discretion of the

Association, may be limited or prohibited. Provided, however, that driving motorcycles or snowmobiles to or from the Lots is allowed.

**Section 5.12. Fences.** All perimeter fences or other fences visible from the any of the Onsite Roadways shall be of the same materials and construction so as to be uniform throughout the subdivision. All perimeter fencing shall be constructed in accordance with the following specifications:

**General:** Brown treated wood post with three rails; rail length approximately eight (8) feet, and top rail height approximately fifty (50) inches. **Posts:** Eight (8) feet in length, buried to approximately 54 inches above natural grade; 6 to 6½ inches in diameter. **Rails:** Milled to 5-inch finished diameter, one-half sawn, approximately eight (8) foot length.

All fencing, walls or other barriers shall be subject to the review and approval of the AERC and shall be kept in good maintenance and repair.

**Section 5.13. Vehicles.** All vehicles shall be parked in garages, driveways or designated parking areas and no vehicle shall be parked upon the Onsite Roadways. Each Lot Owner shall be responsible to see that visitors and guests park on the Lots being visited. No outdoor work shall be performed except washing, polishing and minor maintenance and repairs. Trucks exceeding a capacity of one ton, and recreational vehicles such as boats, campers and camper-trailers may be kept or stored within the Lots but must be Screened from View. The Association shall have the authority to promulgate rules and regulations restricting the types and manner of use of vehicles which may be operated on the Onsite Roadways, including but not limited to motorcycles, motorbikes and bicycles. The provisions and prohibitions of this Section also apply to construction personnel or others parking on roadways during construction on a Lot, unless written AERC approval is first obtained, and the terms and conditions of any approvals are adhered to strictly.

**Section 5.14. Antennas, Poles and Other Structures.** TV, radio and other antennae, as well as satellite dishes are permitted, however, the location, height and size of any such antennae or device must be approved by the AERC, which may include a requirement that such antennae or other device be Screened from View. Fuel tanks must either be buried underground in compliance with all applicable State and Federal regulations or Screened from View.

**Section 5.15. Temporary Structures.** No structure of a temporary character, trailer, mobile home, tent, shack, garage, barn or other outbuilding may be placed upon any Lot or used on any Lot at any time as a residence, either temporarily or permanently. A construction trailer may be allowed, with prior approval of the AERC,



but only during the time of residential construction and must be promptly removed upon completion of construction. Guests of Owners may park motor homes or recreational vehicles on the Lot of such Owner and reside temporarily in such vehicles. Any such use of a Lot for a period exceeding four weeks must be approved by the AERC.

**Section 5.16. Drainage Control.** Reasonable precautions shall be taken during construction and thereafter, to prevent erosion and drainage problems. All disturbed soil areas shall be promptly re-vegetated in such a fashion as to minimize erosion and the possibility of weed introduction. Driveways shall be constructed so as not to interfere with drainage and shall include culverts of appropriate size to prevent obstruction of water flow. No construction or landscaping will be allowed that increases or changes the flow of water onto adjacent Lots. The washing of mud or other debris from any Lot onto the Onsite Roadways is not permitted and shall be strictly controlled.

**Section 5.17. Timber.** A Lot may not be used to any extent for commercial timber harvesting. However, timber and foliage on a Lot may be cut and then sold on a commercial basis provided, however, that the timber is harvested according to the following limitations: (1) that such timber and foliage cutting is for the purpose of improving the Lot for residential construction, views, animal pasture, or sound forest husbandry, or as provided in Section 5.4(i), for creating and maintaining a wildfire "defensible space" around primary structures; (2) that no cutting of timber is permitted within the fifty (50) foot buffer or setback zone around the perimeter of each Lot except to promote the health of the native forest, or as provided in Section 5.18 below; and (3) that any proposal for the removal of timber, such as for those purposes set forth in (1) and (2) above in this Section must, **before any cutting or removal of timber or foliage is commenced**, be presented to the AERC, which shall have the authority to disapprove or require modification of such proposal.

**Section 5.18. Setback Areas.** There shall be a protected setback area around the entire perimeter of each Lot. The setback area shall be fifty (50) feet measured inward from and perpendicular to the exterior lot boundaries, or in the case of the Onsite Roadways, from the edge of the right-of-way. There shall be no development, including the removal of trees and other vegetation, within the setback areas. The AERC shall have the authority, in the exercise of its discretion, to permit within such setback areas the placement of driveways, utilities and fences, and it may authorize the removal of trees and vegetation, and such other limited site modifications as it deems appropriate and permissible. If necessitated by slopes and the need to comply with grade requirements, driveways may encroach to within ten (10) feet of an exterior lot boundary. In the case of any Owner requesting approval from the AERC to allow encroachment of any kind into the fifty (50) foot setback area, other than for the placement of a driveway necessitated by slope or other topographic conditions, it shall be the burden of such requesting Owner to show there will be no adverse impact on any other Owner.

**Section 5.19. Lighting.** All outdoor lighting shall be downcast and shielded and dark-sky compliant. In addition, all exterior lighting of the improvements and grounds in the subdivision will be subject to rules and regulations as may be established by the AERC, or as may otherwise be required by governmental authority having jurisdiction over Whitefish Hills Forest.

## ARTICLE VI HOMEOWNERS ASSOCIATION

**Section 6.1. Membership.** The Whitefish Hills Forest Homeowners Association, Inc. shall have as Members the Owners of each Lot in Whitefish Hills Forest. In addition, the Association shall have as Members the Owners of each Lot contained in any Expansion Property. Every person or entity who is a record owner of a fee, or undivided fee interest in any Lot that is subject to assessment by the Association shall be a Member of the Association. Every person or entity purchasing any such Lot under a contract for deed in regard to which a notice has been placed of record with the Flathead County Clerk and Recorder shall be a Member of the Association, however, any person or entity who has sold or is selling any such Lot under a contract for deed shall not qualify as a Member of the Association. The business and affairs of the Association shall be under the control of the Association's Board of Directors and its Members as set forth in this *Declaration* and the Association's *Bylaws*.

Membership shall be appurtenant to and may not be separated from ownership of the Lot that is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Declarant shall be considered a Lot Owner for purposes of Association membership, and shall therefore be a Member of the Association so long as the Declarant owns one or more Lots in Whitefish Hills Forest. Persons or entities that hold a beneficial interest in a Lot merely as security for the performance of an obligation shall not be considered Members of the Association.

Members shall participate in the Association in the manner prescribed by the *Articles of Organization* and *Bylaws* of the Association, and resolutions of the Board of Directors. The primary purposes of the Association shall be to 1) administer and enforce this *Declaration*, 2) to own, control, maintain, operate and improve the entrances, roads and trails that serve the subdivision, including the network of county roads constituting the north access to the subdivision which is comprised of Stelle Lane and Big Ravine Drive for which Whitefish Hills Forest shares a limited maintenance obligation with Whitefish Hills Proper, and 3) to own, manage, maintain and improve the subdivision's other Common Facilities, including the tanker recharge facility, and any other property, real or personal, which may be owned or acquired by the Association.

**Section 6.2. Composition of Board During Period of Declarant Control.**

During the Period of Declarant Control, the Declarant shall appoint the members of the Board of Directors of the Association. The members so appointed by the Declarant need not be Members of the Association. After the Period of Declarant Control, the Directors shall be elected by the Members in accordance with the provisions of the *Bylaws*. Directors so elected must be Members of the Association.

**Section 6.3. Early Turnover of Control by Declarant.** The Declarant, in its sole discretion, may turn control of the subdivision over to the Members at any time after sixty percent (60%) of the Lots have been sold by the Declarant but before the expiration of the Period of Declarant Control. In the event the Declarant elects to turn control of the subdivision over to the Members before the expiration of the Period of Declarant Control, the Declarant shall send a notice to the Members notifying them of its election for early turnover. Upon receipt of a notice of early turnover from the Declarant, the Members shall have no fewer than one hundred twenty (120) days, as specified in the notice, to assume control of the Association. The Members shall elect a new Board of Directors, appoint the members of the AERC and take such other measures as are appropriate to manage the affairs of the Association and assume control of the Whitefish Hills Forest subdivision.

**Section 6.4. Notice of Membership and Address For Notice.** An Owner, upon becoming such, shall promptly furnish the secretary of the Association with a photocopy of the recorded instrument or other evidence as may be specified by the Board under the *Bylaws* or *Rules and Regulations*, vesting the person or entity with the interest required to make such Owner a Member. At the same time, the Member will provide the Association with a single name and address to which the Association will send any notices given pursuant to the Association's *Bylaws* or this *Declaration*. In the event of any change in the information reported in the original written notice, including change of ownership, the Member will give a new written notice to the Association containing all the information required in the original notice. The Association will keep and preserve the most recent written notice received by the Association with regard to each Member.

All Owners of a Lot shall have one and the same registered name and address to be used by the Association or other Owners for notices, demands and all other communications regarding Association matters. Owners of a Lot will furnish the registered address to the secretary of the Association within seven (7) days after receiving legal or equitable title to the Lot. The registration will be in written form and signed by all Owners of the Lot or by such persons as are authorized to represent the interest of all Owners of the Lot. If no address is registered with the Association, or if all the Owners cannot agree on a single address, then the address of the Lot on the Flathead County Treasurer's tax rolls will be deemed the registered address for any and all matters until another registered address is furnished in accordance with this section.

**Section 6.5. Association Property.** In the event any real or personal property is conveyed to or acquired by the Association, then every Owner shall have a right and easement of enjoyment in and to such Association property which shall be appurtenant to and shall pass with the title to every Lot subject to:

- a) The right of the Association to charge reasonable fees for, and to impose reasonable restrictions on the use, care, maintenance and improvement of said property, and
- b) The right of the Association to dedicate or transfer all or part of said property for such purposes and subject to such conditions as the Association may provide.

**Section 6.6. Rules and Regulations.**

- a) **Adoption, Amendment and Repeal.** From time to time and subject to the provisions of the Association's *Bylaws* and this *Declaration*, the Board of Directors may establish, make, amend and repeal rules and regulations, to be known as the "Whitefish Hills Forest Rules and Regulations," as may be necessary or appropriate for the operation, use and occupancy of areas over which the Association has authority such as, but not limited to, the use of the Common Facilities.

A copy of the *Rules and Regulations* in effect will be distributed to each Member, and any change in such *Rules and Regulations* will be distributed or made available to each Member within a reasonable time following the effective date of the change.

- b) **Enforcement.** The Board of Directors will provide for enforcement of the *Rules and Regulations* as set forth in the *Bylaws* and this *Declaration*. Without limiting the generality of the foregoing, the Board may suspend the voting rights of a Member and/or impose a fine, after notice and an opportunity to be heard as provided in the *Bylaws*, for an infraction of the *Rules and Regulations*.

**ARTICLE VII  
ASSESSMENTS AND COLLECTION**

**Section 7.1. Purpose of Assessments.** The Assessments levied by the Association will be used exclusively to promote the health, safety and welfare of the Owners and occupants of Whitefish Hills Forest.

**Section 7.2. Creation of Lien and Personal Obligation for Assessments.**

Each Owner of any Lot in Whitefish Hills Forest, by accepting a deed to a Lot, is deemed to agree and promise to pay to the Association (1) the Annual Assessments (which may include the establishment and maintenance of an adequate reserve fund) imposed by the Board as necessary to fund the maintenance fund and to generally carry out the functions of the Association; (2) Special Assessments for capital improvements, unusual expenses and other purposes as stated in this *Declaration*; and (3) Default Assessments which may be assessed against a Lot pursuant to the *Articles* and *Bylaws* of the Association or this *Declaration* for the Owner's failure to perform an obligation under the *Articles* or *Bylaws* or this *Declaration*, or because the Association has incurred an expense on behalf of or caused by such Owner.

All Assessments, together with fines, interest, costs and reasonable attorneys' (and legal assistants') fees, will be a charge on the Lot and improvements constructed thereon, and will be a continuing lien upon the Lot against which each such Assessment is made until paid.

Each such Assessment, together with fines, interest, costs and reasonable attorneys' (and legal assistants') fees, will also be the personal and individual obligation of the Owner of such Lot as of the time the Assessment becomes due. If there is more than one Owner of a Lot, the Owners will be jointly and severally liable for such obligations. No Owner may exempt himself from liability for any Assessments by abandonment of his Lot or by waiver of the use or enjoyment of any Common Facilities. Legal action to obtain a money judgment for unpaid Assessments and related charges as listed above may be maintained without foreclosing or waiving the assessment lien provided in this *Declaration*.

**Section 7.3. Annual Assessments.**

- a) **Calculation of Annual Assessments.** The Board will prepare a budget by December 15<sup>th</sup> of each year. Annual Assessments for common expenses will be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance, repair and operation of the Common Facilities including the tanker recharge facility, expenses of management and premiums for insurance coverage as deemed desirable or necessary by the Association, snow removal, landscaping, care and maintenance of grounds and common lighting within the Common Facilities, routine renovations or repairs within the Common Facilities, wages, road maintenance, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this *Declaration*, payment of any deficit remaining from a previous Assessment period, and the supplementing of the reserve account for general, routine

maintenance, repairs and replacement of improvements within the Common Facilities on a periodic basis as needed, and for Whitefish Hills Forest's proportionate share of the cost of maintenance of the Shared Amenities as established in the agreement between Whitefish Hills Forest and Whitefish Hills Proper.

- b) **Apportionment of Annual Assessments.** Each Owner will be responsible for that Owner's share of the common expenses, which will be divided equally among the Lots included in the Whitefish Hills Forest subdivision. Accordingly, at any given time, an Owner's share of common expenses will be determined as a fraction, the numerator of which is the number of Lots owned by the Owner, and the denominator of which is the total number of Lots in Whitefish Hills Forest.
- c) **Collection.** Annual Assessments will be collected in periodic installments as the Board may determine from time to time, such as monthly, quarterly or annually, but until the Board directs otherwise, they will be payable annually. The omission or failure of the Association to fix the Annual Assessments for any Assessment period will not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association will have the right, but not the obligation, to make *pro rata* refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

#### **Section 7.4. Special Assessments.**

- a) **Capital Improvements and Budget Shortfall.** The Board of Directors may levy in any fiscal year one or more Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement in, under, or upon the Common Facilities, including the necessary fixtures and personal property related thereto, or, after adopting and submitting a revised budget to the Association, for the purpose of meeting or making up any shortfall in the current year's budget. Any Special Assessment shall require a two-thirds ( $\frac{2}{3}$ ) vote of those voting at a membership meeting duly called at which a quorum exists, or a two-thirds ( $\frac{2}{3}$ ) vote by written ballot without a meeting when the number of votes cast equals or exceeds a quorum.
- b) **Notice to Membership and Quorum for Action.** Provisions of the Association's *Bylaws* in regard to membership meetings or membership action by written ballot without a meeting, and quorum provisions for voting shall apply to meetings or written ballot actions without a meeting in

which a Special Assessment will be voted on.

- c) **Apportionment and Collection of Special Assessments.** The Board will apportion Special Assessments among the Lots and collect payment according to the same guidelines as set forth for Annual Assessments in Section 7.3(b).

**Section 7.5. Default Assessments.** All monetary fines, penalties, interest or other charges or fees (excluding Annual and Special Assessments) levied against an Owner pursuant to the *Articles, Bylaws* or this *Declaration*, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of an Owner pursuant to the *Articles, Bylaws* or this *Declaration*, and any expense (including without limitation attorneys' and legal assistants' fees) incurred by the Association as a result of the failure of an Owner to abide by the *Articles, Bylaws* or this *Declaration*, constitutes a Default Assessment, enforceable as provided in this *Declaration*.

**Section 7.6. General Remedies of Association for Nonpayment of Assessments.** Any installment of an Annual Assessment, Special Assessment, Default Assessment or any other Assessment that is not paid within thirty (30) days after its due date will be considered delinquent. In the event an installment of an Assessment becomes delinquent, or in the event any Default Assessment is established under this *Declaration*, the Association, in its sole discretion, may take any or all of the following actions:

- a) Assess a late charge for each delinquency at uniform rates set by the Board from time to time;
- b) Charge interest from the date of delinquency at the default rate;
- c) Suspend the voting rights of the Owner during any period of delinquency;
- d) Accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year will be due and payable at once;
- e) Pursue legal action against any Owner personally obligated to pay the delinquent Assessment charges;
- f) File a statement of lien with respect to the Lot and foreclose the lien as set forth in more detail below.

The remedies provided under this *Declaration* are not exclusive, and the

Association may pursue any other remedies to collect delinquent Assessments as may be allowed by law.

**Section 7.7. Assessment Lien.** Any Assessment chargeable to a Lot will constitute a lien on the Lot, effective beginning with the due date of the Assessment. To evidence the lien, the Association may, but is not obligated to, prepare a written statement of lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association and the amounts of the delinquent Assessments then owing. Any such statement will be duly signed and acknowledged by an officer or Director of the Association or by the manager, if any, and will be served upon the Owner of the Lot in the manner and at the address utilized by the Association for notifying the Owner as shown in the Association records. At any time after ten (10) days has elapsed from the date the Association sends the statement of a lien to the Owner, the Association may record the statement of lien in the office of the Clerk and Recorder of Flathead County, Montana. Thirty (30) days following the sending of such notice to the Owner, the Association may proceed to foreclose the lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Montana. The Association will have the power to bid on a Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot.

**Section 7.8. Successor's Liability for Assessments.** Except as provided in Section 7.9 below, the Assessment lien, until paid, will remain against the Lot even when title is transferred to a successor in title, without prejudice to the right of the successor in title to recover from any prior Owner any amounts paid by such successor in title. The liability of a successor in title will not be personal and will terminate upon termination of such successor's title in the Lot. Any such successor, however, will be entitled to rely on a written statement of the status of Assessments made by or on behalf of the Association under Section 7.11 below. Any such written statement of status showing the Lot to be free from unpaid Assessments against said Lot will result in the successor taking the Lot free from such. This, however, will not relieve the original Owner from the continuing personal liability for such unpaid Assessments.

**Section 7.9. Waiver of Homestead Exemption; Subordination of Lien; Rights of First Mortgagees.** The lien of the Assessments will be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Montana, and to all other liens and encumbrances except the following:

- a) liens and encumbrances recorded before the date of the recording of this *Declaration*;
- b) liens for real estate taxes and other governmental assessments or charges duly imposed against the Lot by a Montana governmental or political subdivision or special taxing district (including a RSID), or any



other liens made superior by statute; and

- c) the lien for all sums unpaid on a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent, including any and all advances made by the First Mortgagee, even though some or all of such advances may have been made subsequent to the date of attachment of the Association's lien.

With respect to Section 7.9(c), above, any First Mortgagee who acquires title to a Lot by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Lot free of any claims for unpaid Assessments, interest, late charges, costs, expenses and attorneys' fees against the Lot which accrue prior to the time such First Mortgagee or purchaser acquires title to the Lot. However, such First Mortgagee or purchaser from such First Mortgagee will be liable for all Assessments accruing beginning with the date title to the Lot vests in the First Mortgagee or purchaser from such First Mortgagee.

All other persons who hold a lien or encumbrance of any type not described in Section 7.9(a) through Section 7.9(c) will be deemed to consent that such lien or encumbrance will be subordinate to the Association's future liens for Assessments, interest, late charges, costs, expenses and attorneys' (and legal assistants') fees, as provided in this Article VII, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

**Section 7.10. Reallocation of Assessments Secured by Extinguished Liens.**

The sale or transfer of any Lot made for the purpose of enforcing any of the liens to which the lien for Assessments is subordinate will extinguish the lien of such Assessments as to installments that became due prior to such sale or transfer. The amount of such extinguished lien may be reallocated and assessed to all Lots as a common expense at the direction of the Board. However, no such sale or transfer will relieve the purchaser or transferee of a Lot from liability for, or the Lot from the lien of, any Assessments made after the sale or transfer. Also, except as may be otherwise provided by law, extinguishment of a lien in this manner will not absolve the former Owner who originally incurred the lien from personal liability for the payment of the obligation.

**Section 7.11. Statement of Status of Assessments.** The Association will furnish to an Owner or to the Owner's designee or to any mortgagee a statement setting forth the amount of unpaid Assessments then levied against the Lot in which the Owner, designee or mortgagee has an interest. The Association will deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party within fourteen (14) business days after an Association Director

receives the request which must be served by personal delivery or by certified mail, first class postage prepaid, return receipt requested. The information contained in such statement, when signed by an officer or Director of the Association or its manager, will be conclusive upon the Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith. The Association is authorized to charge to the party seeking such a statement of Assessment status, a fee for the Association's administrative time and costs involved in preparing and forwarding such an Assessment status statement.

**Section 7.12. Failure to Assess.** The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

**Section 7.13. First Mortgagee's Payment of Assessments.** First Mortgagees, jointly or individually, may pay taxes or other charges which are in default by the mortgagor and which may or have become a charge against an Owner's Lot. Also, a First Mortgagee will be entitled to cure any delinquency in the payment of Assessments of the Owner of a Lot encumbered by the First Mortgage. In that event, the eligible mortgage holder will be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

## ARTICLE VIII EXPANSION AND WITHDRAWAL

**Section 8.1. Addition of Other Property.** During the Period of Declarant Control, the Declarant reserves the right to annex Expansion Property to Whitefish Hills Forest. Any Expansion Property so annexed must be contiguous to Whitefish Hills Forest. The Declarant shall give notice of any such annexation of Expansion Property by recording a document in the office of the Clerk and Recorder for Flathead County containing at least the provisions set forth in Section 8.2, below. The terms of this *Declaration* shall apply to such Expansion Property from the date of annexation, however, only to the extent the Declarant provides in the notice of annexation that this *Declaration* shall be applicable to such Expansion Property. To the extent made applicable to such Expansion Property by the Declarant at the time of such annexation, the rights, powers and responsibilities of the Declarant and the other Owners of Lots within such Expansion Property shall be the same as they are with respect to the rest of the Whitefish Hills Forest property.

**Section 8.2. Notice of Annexation of Expansion Property.** The notice of the

annexation of Expansion Property referred to in Section 8.1 above, shall include at least the following provisions:

- a) a reference to this *Declaration* including the date of its recording and other recording information in the records of Clerk and Recorder for Flathead County;
- b) the legal description of such Expansion Property;
- c) a statement that the provisions of this *Declaration*, or some specified part or parts thereof, shall apply to such Expansion Property; and
- d) such other or different covenants, conditions, restrictions or reservations as Declarant shall, in Declarant's sole discretion, specify to regulate and control the use, occupancy and improvement of such Expansion Property.

**Section 8.3. Development of Expansion Property.** During the Period of Declarant Control, the Declarant shall have the sole and exclusive discretion concerning the extent, type and sequence of development of any Expansion Property that may be annexed to Whitefish Hills Forest under the provisions of this Article VIII. The Declarant may develop such Expansion Property in a manner similar to that utilized for the other portions of the Whitefish Hills Forest Property, or the Declarant may employ a manner of development different therefrom. This could include a more dense development with significant common amenities. The Declarant shall not be bound to develop Expansion Property in any particular manner and shall have complete and unrestricted discretion in developing any Expansion Property. Also, in lieu of or in addition to annexation of Expansion Property to Whitefish Hills Forest, the Declarant may simply add or affiliate Expansion Property with the Whitefish Hills Forest Property in a manner short of full annexation. Expansion may be accomplished in stages by successive additions or in a single annexation, addition or affiliation.

**Section 8.4. Applicability of this *Declaration* to Expansion Property.** Upon the recording of any such notice of annexation, the definitions used in this *Declaration* will be expanded to encompass the Expansion Property. Such notice of annexation may, in the sole discretion of the Declarant, add supplemental covenants, conditions, restrictions or reservations, or delete or modify provisions of this *Declaration* as it applies to the Expansion Property. Separate homeowners associations may be formed to govern the affairs of such Expansion Property if deemed appropriate by the Declarant.

**Section 8.5. Withdrawal of Property.** The Declarant reserves the right to, and may in its sole discretion, at any time during the Period of Declarant Control, withdraw any portion of the Property, including any Expansion Property, from Whitefish Hills

Forest and from the application and effect of this *Declaration*. In the event of a withdrawal, the Declarant shall record a notice of withdrawal identifying the property withdrawn.

## ARTICLE IX RESERVATION OF ROAD, TRAIL AND UTILITY EASEMENTS

**Section 9.1. Reservation of Easements.** The Declarant hereby reserves and retains the right over, under and across all sixty (60) foot rights-of-way for the Onsite Roadways for access easements and for the installation of utilities for the benefit of all the property known as Whitefish Hills Forest, as said Onsite Roadways pass over, across, and through each Lot as more fully shown and depicted on the plats for the Whitefish Hills Forest property, for the purpose of ingress and egress to and from each Lot and for the purpose of locating, installing, erecting, constructing, maintaining or using underground electric and telephone lines and other utilities, and for snow storage in the course of plowing and snow removal. To the extent permitted by applicable laws and regulations, the Declarant hereby declares that said roadways are private in all respects. The easements hereby reserved and retained will eventually be conveyed by the Declarant to the Association and dedicated to the Association for the use of all the Lot Owners, and the Association shall thereafter have control over the Onsite Roadways. Declarant reserves the right to convey, and to grant the right of use of all such easements for the benefit of any Expansion Property and any other property now owned or in the future acquired by the Declarant, whether or not such property is annexed to Whitefish Hills Forest.

**Section 9.2. Extension of Easements for Expansion Property.** In the event easements in Whitefish Hills Forest are extended to serve any Expansion Property, all such Expansion Property, and all lots within such Expansion Property, shall enjoy the benefit of all easements in Whitefish Hills Forest, including the Onsite Roadways, utility easements and the recreational trail easements. Conversely, all Lots in Whitefish Hills Forest shall be subject to and burdened by the same easements for the benefit of any such Expansion Property and any other property now owned or in the future acquired by the Declarant, whether or not such property is annexed to Whitefish Hills Forest.

**Section 9.3. Recreational Trail Easements.** The Declarant hereby also reserves and retains the right over and across the recreational trail easements as shown on the plats for Whitefish Hills Forest. These easements may be used for pedestrian, bicycle and equestrian recreation, but no motorized vehicle use is permitted without specific authorization from the AERC. The maintenance of these easements will be the responsibility of the Association. The Declarant hereby declares that said trail easements are private in all respects and will be dedicated to the Association for the use of the Lot Owners, and the Association shall thereafter have control over the

trail system. The Declarant reserves the right to grant the right of use of such trail easements to any Expansion Property and to any other property now owned or in the future acquired by the Declarant, whether or not such property is annexed to Whitefish Hills Forest. Should such Expansion Property or other property not be annexed to Whitefish Hills Forest, the Association may require that such users of the trail easements within Whitefish Hills Forest contribute a proportionate and equitable share to the maintenance and repair of such. The recreational trail easements will be deemed reciprocal so that any Expansion or other property enjoying the right to use such easements over portions of Whitefish Hills Forest will carry with it the reciprocal right of the Members of the Association to utilize the trails on such Expansion or other property whether or not it is formally annexed to Whitefish Hills Forest.

**Section 9.4. Expenses of Utility Extension to Lots.** All costs for extension of utilities and telephone lines from the Onsite Roadways to a Lot shall be borne entirely by the Lot Owner. In the event it is necessary for any Lot Owner to cross an Onsite Roadway with the installation of a utility, such Owner shall make application to and secure the approval of the AERC before undertaking such extension. Any Lot Owner who shall place any building, improvement, shrub, hedge or tree on an easement or right-of-way reserved herein shall be required, at the request of any affected Lot Owner, the Declarant, the Association or its AERC, or by any utility company, to remove such structure, improvement or vegetation at such Lot Owner's expense.

## ARTICLE X RELATIONSHIP BETWEEN WHITEFISH HILLS FOREST AND WHITEFISH HILLS

**Section 10.1. Shared Amenities.** Whitefish Hills Forest and Whitefish Hills have agreed to share the use of certain roads, gates, trails and other amenities as reflected in agreements between the two subdivisions and as provided in the *Amended 2011 Declaration of Covenants, Conditions, Restrictions and Reservations for Whitefish Hills*, and in Article X of this *Declaration*. These roads, gates, trails and other amenities are referred to herein and in the agreements between the subdivisions as the "Shared Amenities" and they consist of the following:

- a) The entire length of Whitefish Hills Drive from the south gate for Whitefish Hills Proper to its intersection with U.S. Highway 93;
- b) The primary access roads to the north of the subdivision consisting of Big Ravine Drive and Stelle Lane from the south gate for Whitefish Hills Proper to U.S. Highway 93;
- c) Dancing Bear Lane (the road serving the homeowner's park);

- d) The Whitefish Hills north and south gates including gate décor and landscaping;
- e) The Whitefish Hills sign at the intersection of Stelle Lane and U.S Highway 93;
- f) The homeowner's park on Blanchard Lake including the dry hydrant in Blanchard Lake;
- g) The equestrian trail connector easements for access from Whitefish Hills to the Spencer Mountain area;
- h) Any other amenities which the two subdivisions might agree to share in the future.

**Section 10.2. Maintenance of Shared Amenities.** The Shared Amenities will be maintained by Whitefish Hills. Whitefish Hills Forest will pay to Whitefish Hills a proportionate share of the cost of maintaining the Shared Amenities. The applicable share of Whitefish Hills Forest to be paid to Whitefish Hills is the percentage of the total cost of maintaining the shared amenities that the number of assessable Whitefish Hills Forest Lots bears to the total number of assessable Whitefish Hills Lots plus assessable Whitefish Hills Forest Lots. Under this formula, the obligation of Whitefish Hills Forest to pay its share of the costs of maintaining the Shared Amenities will increase as the number of assessable Whitefish Hills Forest lots increases as a percentage of the total number of combined assessable lots. For example, if there were ten (10) assessable Whitefish Hills Forest lots (as defined below), and eighty-six (86) total assessable Lots in both subdivisions combined, then the share of Whitefish Hills Forest for the maintenance of the Shared Amenities would be 10/86ths, or twelve percent (12%) of the total cost.

a) **Definitions Applicable to Shared Amenities.** In determining the amount to be paid by Whitefish Hills Forest as its share of the cost of maintaining the Shared Amenities, the following definitions shall apply:

- (i) **Assessable Whitefish Hills Forest Lot:** A lot in Whitefish Hills Forest becomes an assessable Whitefish Hills Forest lot upon its sale or other transfer (such as by gift) to a third party other than Declarant, or if any building construction is undertaken on the lot by Declarant or anyone acting on behalf of Declarant. Each assessable Whitefish Hills Forest lot will be counted as one-half of a lot for the annual quarter in which it becomes assessable under this definition.

(ii) **Assessable Whitefish Hills Lot:** Each lot within Whitefish Hills is an assessable lot excluding, however, any lot that is not assessable (e.g., the Homeowner's Park) or, because of special circumstances, is not assessed at all.

(iii) **Total Assessable Lot Count:** The number of Assessable Whitefish Hills Lots plus the number of Assessable Whitefish Hills Forest Lots.

b) **Whitefish Hills Forest Cost Share of Shared Amenities:** Expressed as a formula using the above definitions, the share of Whitefish Hills Forest for the maintenance of the Shared Amenities is as follows:

Whitefish Hills Forest Share of Costs = Assessable Whitefish Hills Forest Lots x Cost of Maintenance of Shared Amenities ÷ Total Assessable Lot Count

c) **Reserve Account(s).** Whitefish Hills will establish and maintain a reserve account to defray the cost of long-term maintenance or replacement of the Shared Amenities, with such being deemed part of the cost of maintaining the Shared Amenities and which may be included in determining the share of Whitefish Hills Forest for the cost of maintaining the Shared Amenities.

**Section 10.3. Recreational Trails.** Owners of Lots in Whitefish Hills Forest shall have the right to use and enjoy, to the same extent as the owners in Whitefish Hills, all of the recreational trails in Whitefish Hills. Conversely, the owners in Whitefish Hills shall have the right to the use and enjoyment of all the recreational trails in Whitefish Hills Forest. Each Association will provide for the maintenance of that portion of the recreational trail system within the exterior boundaries of its own subdivision.

**Section 10.4. Roads.** Owners of Lots in Whitefish Hills Forest shall have the right to use and enjoy, to the same extent as the owners of Whitefish Hills, all of the roads in Whitefish Hills. Conversely, the owners of Whitefish Hills shall have the right to the use and enjoyment of all the roads in Whitefish Hills Forest. Each Association will provide for the maintenance of that portion of the road system within the exterior boundaries of its own subdivision, with the exception of Whitefish Hills Drive, which is a Shared Amenity.

**Section 10.5. Whitefish Hills Forest South Entrance.** The entrance at the south end of Whitefish Hills Forest located at the entrance to Whitefish Hills Forest off KM Ranch Road, shall be installed and controlled by Whitefish Hills Forest, but shall be fully accessible by the Owners within Whitefish Hills.

**Section 10.6. Master Association and Dispute Resolution.** A master homeowners association (herein "Master Association") shall be established consisting of two members from the Board of Directors of the Association acting on behalf of Whitefish Hills Forest, and two members from the board of directors or other governing body of Whitefish Hills. The Master Association shall have two primary purposes: a) To resolve any disputes that arise between the two entities, and b) to approve extraordinary (other than routine) maintenance and improvement projects which involve the Shared Amenities and in the cost of which Whitefish Hills Forest would be obligated to share. For example, in the event a dispute or disagreement should arise over the chip-sealing or reconstruction of Big Ravine Drive, the control over a gate or other such matter, and the two homeowners associations are unable to reach agreement, the matter will be referred to the Master Association for resolution.

If the Master Association is unable to resolve the dispute or disagreement, then the entities shall participate in an informal mediation process in a good faith effort to resolve the matter through nonbinding collaborative mediation. The entities may, however, agree to be bound by the results of any such mediation. In the event the dispute or disagreement cannot be resolved through mediation, the entities shall submit the matter to binding arbitration following the process outlined in Montana's adaptation of the *Uniform Arbitration Act*. The entities may grant to the Master Association such other powers and duties as they deem appropriate by mutual agreement. In the event Whitefish Hills wishes to undertake a maintenance or improvement project that is beyond or in addition to regular or routine maintenance, and such maintenance or improvement project would result in an Assessment to Whitefish Hills Forest, then in such event, if requested by Whitefish Hills Forest, the project must first be reviewed and approved by the Master Association.

**Section 10.7. Notification of Annual Meeting.** The homeowners associations for Whitefish Hills Forest and Whitefish Hills will provide notice to each other of their respective annual meetings and provide time on the agendas for such meetings for remarks by representatives of the other and discussion of issues affecting both subdivisions.

## ARTICLE XI BUDGETING, BILLING AND PAYMENT BETWEEN WHITEFISH HILLS PROPER AND WHITEFISH HILLS FOREST

**Section 11.1. Budgeting and Notice of Assessment.** At the beginning of each fiscal year Whitefish Hills will prepare and present to Whitefish Hills Forest a budget estimate for the coming fiscal year reflecting Whitefish Hill's best estimate of the expenses expected to be incurred for the maintenance of the Shared Amenities and the share of Whitefish Hills Forest of such expenses. Whitefish Hills Forest, through its designated representatives, will have the right to examine the books and records of



Whitefish Hills upon which the estimate is based and the calculation by which the share of Whitefish Hills Forest was determined. If Whitefish Hills Forest disagrees with the expense estimate or the determination of the proportionate share payable by Whitefish Hills Forest, the governing body of Whitefish Hills Forest may request the opportunity to meet and confer with the appropriate representatives of Whitefish Hills who have knowledge of the information which led to the projections and who have authority to modify them should they deem that appropriate. If, after having exercised its opportunity to meet and confer, Whitefish Hills Forest is still not satisfied with the projections and its proportionate share of the expense of maintaining the Shared Amenities, then Whitefish Hills Forest may appeal the matter to the Master Association for resolution. Any appeal to the Master Association must be submitted in writing no later than forty-five (45) days after the presentation of the budget and projections to Whitefish Hills Forest. Any appeal of a quarterly billing statement must be presented to the Master Association before the due date of such statement. The Master Association will utilize the mediator/arbitrator process outlined in Section 10.6 above to address such dispute if the matter cannot be resolved by the Master Association on its own.

**Section 11.2. Quarterly Billing.** Each quarter Whitefish Hills will present Whitefish Hills Forest with a billing statement for Whitefish Hills Forest's share of the actual cost of maintenance of the Shared Amenities for the previous quarter. Such bills shall be due and payable within fifteen (15) days of receipt by Whitefish Hills Forest.

**Section 11.3. Enforcement of Obligation by Whitefish Hills.** In the event Whitefish Hills Forest fails to timely pay its share of the cost of maintaining the shared amenities, Whitefish Hills has the authority to, at any time after ten (10) days from providing Whitefish Hills Forest with a written notice setting forth the default, refer the matter to the Master Association for resolution or enforcement. Expedited treatment shall be given to any such claim made by Whitefish Hills that there has been a failure by Whitefish Hills Forest to timely pay an assessment. The Master Association will utilize the mediation/arbitration process outlined in Section 10.6 above to address this type of dispute if it cannot be resolved by the Master Association on its own.

## ARTICLE XII INSURANCE AND FIDELITY BONDS

**Section 12.1. Authority to Purchase.** The Board of Directors of the Association or its duly authorized agent will purchase all insurance policies relating to the Common Facilities. Neither the Board nor its manager, nor the Declarant will be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at unreasonable costs.

**Section 12.2. Assessments for Premiums.** All such insurance coverage obtained by the Board of Directors will be treated as a common expense payable from Annual Assessments or Special Assessments (allocable to all of the Lots or to only some of the Lots, if the claims for damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners), or as an item to be paid from working capital reserves established by the Board of Directors.

**Section 12.3. Assessments for Payment of Deductible.** The deductible, if any, associated with any claim made under any insurance policy purchased by the Board of Directors may be treated as a common expense payable from Annual or Special Assessments allocable to all the Lots or, if the claim for damages arises from the negligence of a particular Owner or Owners, the Board, in its reasonable discretion, may allocate that deductible to that Lot or Lots.

**Section 12.4. Physical Damage Insurance on Common Facilities.** The Association will obtain insurance for such insurable improvements and with such coverages, limits, deductibles and other terms and conditions as the Board may determine from time to time.

**Section 12.5. Liability Insurance.** The Association will obtain a comprehensive policy of public liability insurance and property damage insurance with such coverages and limits as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Association, the manager, and the respective employees, agents and all persons acting as agents against any liability to the public or the Owners (and their guests, invitees, tenants, agents and employees) arising in connection with the ownership, operation, maintenance or use of the Onsite Roadways, recreational trails and other Common Facilities within Whitefish Hills Forest and any other areas under the control of the Association. Declarant will be included in the coverage as an additional insured in Declarant's capacity as an Owner or director. The Owners will be included as additional insured's, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Facilities.

The Board of Directors will review the coverage and coverage limits from time to time, but, generally, the Board will carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to Whitefish Hills Forest, and in no event will such coverage be less than \$1,000,000 (to be adjusted to account for inflation) for all claims for bodily injury or property damage arising out of any one occurrence.

**Section 12.6. Fidelity Insurance.** At the option of the Board of Directors, fidelity bonds or insurance coverage may be maintained by the Association to protect

against dishonest acts on the part of its officers, directors and employees, and on the part of any others who handle or are responsible for handling the funds of or administered by the Association. In addition, if responsibility for handling funds is delegated to a manager, such bonds or insurance coverage may be required for the manager and its officers, employees and agents, as applicable. Such fidelity bonds or insurance coverage, if obtained, will name the Association as an obligee or insured and will be written in such amount as the Board may determine appropriate.

**Section 12.7. Provisions Common to Physical Damage Insurance, Liability Insurance and Fidelity Insurance.** Any insurance coverage obtained by the Association under the provisions of this Article above will be subject to the following provisions and limitations:

**12.7.1.** The named insured under any such policies will be the Association, which will have exclusive authority to negotiate losses under such policies.

**12.7.2.** Each Owner will be an insured person with respect to liability arising out of the Owner's interest in the Common Facilities or membership in the Association.

**12.7.3.** The policies will contain a waiver by the insurer of any right to assert a claim by way of subrogation against the Board of Directors, the Association, the manager and any Owner and their respective agents, employees, or tenants, and in the case of Owners, members of their households.

**Section 12.8. Personal Liability Insurance of Officers and Directors.** To the extent obtainable at a reasonable cost, appropriate officers' and directors' personal liability insurance may be obtained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

**Section 12.9. Workers' Compensation Insurance.** The Association will obtain workers' compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

**Section 12.10. Other Insurance.** The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it deems appropriate with respect to the Association's performance of its responsibilities and duties.

**Section 12.11. Insurance Obtained by Owners.** Each Owner will have the right to obtain insurance for such Owner's benefit, and at such Owner's expense, covering the Owner's Lot and improvements, personal property and personal liability. However, no insurance coverage obtained by an Owner will operate to decrease the

amount that the Board of Directors, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that coverage.

### ARTICLE XIII TERM OF DECLARATION

The provisions of this *Declaration* shall be binding for a term of twenty (20) years from the effective date of this *Declaration* after which time the *Declaration* shall automatically be extended for successive periods of ten (10) years, unless otherwise terminated or modified as provided herein.

### ARTICLE XIV AMENDMENTS

**Section 14.1. By Declarant or by Owners.** The Declarant may amend or modify this *Declaration* at any time, in its sole discretion, during the Period of Declarant Control. After the Period of Declarant Control, this *Declaration* may be modified or amended only upon the written consent of Owners holding at least two-thirds ( $\frac{2}{3}$ ) or more of the votes in the Association. However, no amendment impairing the substantive rights of the Declarant may be made without the Declarant's consent.

**Section 14.2. Amendment Recording.** Any document so amending, modifying or restating this *Declaration* will be immediately effective upon the recording, in the records of Flathead County, Montana, of such document executed and acknowledged by the necessary number of Owners, or alternatively and with equal force and validity, upon the recording, in the records of Flathead County, Montana, of a document stating the action taken, together with a certificate signed by an officer of the Association stating that the requisite number of written consents of Owners were obtained, or that the amendment was duly made during the Period of Declarant Control.

**Section 14.3. Binding Effect of Amendments and First Mortgagee Status.** Amendments made pursuant to this Article XIV shall be binding upon Declarant, all Owners, their families, tenants, guests, invitees and employees, and their respective heirs, successors and assigns. Joinder of the First Mortgagees shall not be required in order to effect an amendment unless such amendment materially affects the rights of First Mortgagees as set forth in Section 7.9 or Section 7.13.

### ARTICLE XV ENFORCEMENT

**Section 15.1. Who May Enforce Covenants.** The Declarant, during the Period of Declarant Control, the Association, the AERC or any Lot Owner shall have the right to enforce, by any proceeding at law or in equity, any or all of the covenants, conditions, restrictions and reservations contained in this *Declaration* as it may from time to time be amended, modified or restated. The failure of the Declarant, the Association, the AERC or any Owner to enforce any covenant or restriction herein contained shall not be deemed to be a waiver of the right to do so thereafter. The Declarant shall not have the duty to take any affirmative action to enforce any restrictive covenants or other provision of this *Declaration* nor shall the Declarant be subject to any liability for its failure to so act.

**Section 15.2. Enforcement by AERC.** The AERC may notify any Owner violating any restrictive covenant or other provision of this *Declaration* specifying the violation and demanding that it be remedied within a period of thirty (30) days. If the Owner fails or refuses to remedy the violation, the Board or the AERC, at the Lot Owner's expense, may correct the violation set forth in the notice, or place a lien upon the Lot in the amount of what is estimated to be the cost to correct the violation. Should the Board or the AERC correct the violation, and if the Lot Owner fails to reimburse the Association within thirty (30) days after receiving from the AERC or the Association a statement of the costs incurred in correcting the violation, the Board or the AERC, through the Association, may assess a lien in accordance with Article VII, or proceed as further provided therein. No entry upon a Lot by the Board or the AERC or their agents, or any members of the Board or the AERC, for purposes of enforcing this *Declaration* may be deemed a civil or criminal trespass.

**Section 15.3. Attorneys Fees and Costs.** If any Lot Owner, the Declarant, the Board of Directors or the AERC commences legal proceedings to enforce any provision of this *Declaration*, the prevailing party in such action shall be entitled to recover from the other party reasonable attorney's fees (and legal assistant's fees) and costs of said action. Provided, however, that attorney's fees may be assessed against the Declarant or the Association or its Board or AERC only in the event a specific determination is made by the court in which the enforcement action is brought that the Declarant or the Association, its board or AERC, lacked a good faith basis for pursuing the enforcement action and in so doing acted unreasonably or in bad faith. Absent such a specific determination, no award of attorney's fees against the Declarant or the Association, its Board or AERC shall be imposed.

## ARTICLE XVI SEVERABILITY

The invalidation of any part of this *Declaration* by judgment or court order shall in no way affect the other provisions, which shall remain in full force and effect.

**ARTICLE XVI  
CONSTRUCTION AND BINDING EFFECT**

This *Declaration* shall be construed pursuant to the laws of the State of Montana and shall be binding upon the Declarant and the Declarant's successors and assigns, and upon the Owners and their successors and assigns. Time is of the essence in complying with this *Declaration*. This *Declaration* should be broadly and liberally construed to accomplish its intended purposes to promote a high quality subdivision in harmony with its surroundings and the natural environment.

**IN WITNESS WHEREOF**, the Declarant has executed this *Declaration* the day and year first written above to become effective as of the 1<sup>st</sup> day of August, 2014.

**DECLARANT**

**WHITEFISH HILLS FOREST, LLC**  
A Montana Limited Liability Company

By:   
Donald R. Murray, Representative Duly  
Authorized by Company Resolution

STATE OF MONTANA )  
  : ss.  
County of Flathead    )

This Instrument was acknowledged before me this 23<sup>rd</sup> <sup>September</sup> day of ~~August~~, 2014,  
by Donald R. Murray, duly authorized representative of Whitefish Hills Forest, LLC.

  
[Signature of Notary]

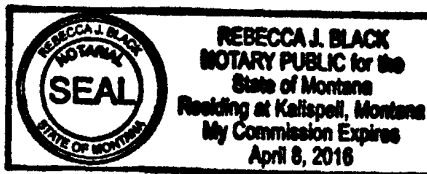
~~\_\_\_\_\_  
[Typed, stamped or printed Name of Notary]~~

~~Notary Public for the State of Montana~~

~~Residing at \_\_\_\_\_~~

~~[City of Residence]~~

My commission expires: \_\_\_\_\_ 20 \_\_\_\_\_  
  [Month      Day            Year]



## EXHIBIT "A"

### TO AMENDED and RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTINS AND RESERVATIONS

#### LEGAL DESCRIPTION OF WHITEFISH HILLS FOREST PROPERTY

August 1, 2014

#### DESCRIPTION:

A TRACT OF LAND, SITUATED, LYING AND BEING IN THE SOUTHWEST QUARTER OF SECTION 14; IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER, AND IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22; IN THE WEST HALF OF SECTION 23; AND IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 27; ALL IN TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M.,M., FLATHEAD COUNTY, MONTANA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

**BEGINNING** at the northwest corner of the North Half of the Southwest Quarter of Section 14, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana which is a brass cap; Thence along the north boundary of said N1/2SW1/4 N89°35'45"E 2638.76 feet to a found iron pin and the northeast corner thereof; Thence along the east boundary of said N1/2SW1/4 S00°19'50"W 1327.58 feet to a found iron pin and the southeast corner thereof; Thence along the south boundary of said N1/2SW1/4 S89°35'14"W 1318.20 feet to a found iron pin and the northeast corner of the Southwest Quarter of the Southwest Quarter of said Section 14; Thence along the east boundary of said SW1/4SW1/4 S00°17'45"W 1328.35 feet to a found iron pin and the northwest corner of the East Half of the Northwest Quarter of Section 23, Township 30 North, Range 22 West, P.M.,M.; Thence along the north boundary of said E1/2NW1/4 N89°32'43"E 1317.12 feet to a found brass cap and the northeast corner thereof; Thence along the east boundary of said E1/2NW1/4 S00°16'17"W 2641.87 feet to the northeast corner of the East Half of the Southwest Quarter of said Section 23; Thence along the east boundary of said E1/2SW1/4 S00°08'54"W 2644.70 feet to the southeast corner thereof; Thence along the south boundary of said E1/2SW1/4 S89°44'46"W 1320.10 feet to a found iron pin and the southeast corner of the Southwest Quarter of the Southwest Quarter of said Section 23; Thence along the south boundary of said SW1/4SW1/4 S89°46'03"W 1320.27 feet to the northeast corner of the Northeast Quarter of the Northeast Quarter of



Section 27, Township 30 North, Range 22 West, P.M.,M.; Thence along the east boundary of said NE1/4NE1/4 S00°11'00"W 1024.91 feet to a found pipe on the northerly R/W of a 60 foot road known as KM Ranch Road; Thence along said northerly R/W N63°17'21"W 142.28 feet to a found pipe; Thence N58°51'51"W 732.96 feet to a found pipe; Thence N58°47'54"W 460.01 feet to a found pipe; Thence N73°30'22"W 182.70 feet to a found pipe; Thence leaving said R/W N00°08'13"E 287.79 feet to a found pipe and the southwest corner of the Southeast Quarter of the Southeast Quarter of Section 22, Township 30 North, Range 22 West, P.M.,M.; Thence along the west boundary of said SE1/4SE1/4 N00°18'58"E 1320.26 feet to a found iron pin and the northwest corner thereof; Thence along the north boundary of said SE1/4SE1/4 N89°53'14"E 1325.17 feet to a found iron pin and the southeast corner of the Northeast Quarter of the Southeast Quarter of said Section 22; Thence along the east boundary of said NE1/4SE1/4 N00°16'03"E 1319.90 feet to a found brass cap and the southeast corner of the Southeast Quarter of the Northeast Quarter of said Section 22; Thence along the east boundary of said SE1/4NE1/4 N00°17'20"E 1319.90 feet to a found iron pin and the southeast corner of the Northeast Quarter of the Northeast Quarter of said Section 22; Thence along the south boundary of said NE1/4NE1/4 S89°50'58"W 1324.75 feet to a found iron pin and the southwest corner thereof; Thence along the west boundary of said NE1/4NE1/4 N00°17'45"E 1318.70 feet to a found iron pin and the northwest corner thereof; Thence along the north boundary of said NE1/4NE1/4 N89°49'20"E 1324.26 feet to a found brass cap and the southwest corner of the Southwest Quarter of said Section 14; Thence along the west boundary of said SW1/4 N00°13'53"E 2656.13 feet to the point of beginning and containing 539.842 ACRES.