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Debbie Pierson, Flathead County MT by SM 6/28/2023 12:02 PM

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF MOUNTAIN TIME TOWNHOMES

ARTICLE I
DECLARATION - PURPOSES

1.1 **Property.** The Declarant owns that real property commonly known as 122 & 130 Karrow Avenue, Whitefish, Montana, and more particularly described on Exhibit A (the "Property"), and desires to subject the Property to this Declaration of Covenants, Conditions, Restrictions and Easements of Mountain Time Townhomes (the "Declaration").

1.2 **General Purposes.** The purpose of this Declaration is to insure the best use of the Project and the most appropriate development and improvement of each Lot within the Project; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of their Lot; to preserve so far as is practicable the natural beauty of the Project; to prevent the construction of inappropriate structures; and in general, to provide guidelines to enhance and/or protect the value of the Project.

ARTICLE II
DEFINITIONS

2.1 **Access Roadway.** Access Roadway means that twenty-foot (20') wide roadway through the Project that is for the benefit of all Owners to access their Lots and shown as the "Access and Utility Easement" on the Site Plan.

2.2 **Administrative Rules.** Administrative Rules means those rules and regulations adopted by the Board, which, subject to the terms of this Declaration and/or the Bylaws, may be modified and/or amended from time to time.

2.3 **Annual Assessment.** Annual Assessment shall have the meaning ascribed to it in Section 8.3.

2.4 **Articles of Incorporation.** Articles of Incorporation means the Articles of Incorporation of Mountain Time Owners' Association, Inc., as the same may be amended from time to time.

2.5 **Assessments.** Assessments shall have the meaning ascribed to it as set forth in Section 8.1.

2.6 **Association.** Association means the Mountain Time Owners' Association, Inc., being all Owners acting in a group in accordance with this Declaration, the Articles of Incorporation, and the Bylaws.

2.7 **Board.** Board means the Association's three (3) member board of directors.

2.8 **Bylaws.** Bylaws means the Bylaws of the Association, as the same may be amended or modified pursuant to this Declaration, the Articles of Incorporation, and/or Bylaws.

2.9 **Common Expenses.** Common Expenses means (i) all expenses incurred by the Association in administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Facilities; (ii) all expenses incurred by the Association in administering, servicing, conserving, managing, maintaining, repairing or replacing any items required to be or which may be administered, serviced, conserved, managed, maintained, repaired or replaced by the Association under the Governing Documents; (iii) premiums for any insurance carried by the Association; (iv) all expenses incurred by the Association in administering and managing the Association; (v) all expenses incurred by the Association in any other activities undertaken for the common benefit of the Owners or for the benefit of the Association; and (vi) all expenses lawfully determined to be Common Expenses by the Board of Directors of the Association.

2.10 **Common Facilities.** Common Facilities means (i) the Drainage Pond, Drainage Ditch and Access Roadway; (ii) all utilities commonly used by all Owners, including, but not limited to, telephone lines, power lines, sewer lines, storm water drains, storm water lines and storm water systems, propane/gas lines and water, and any other utility system(s) and/or component(s) for the common use and/or benefit of all Owners; (iii) easements intended for the common use by all Owners, and (iv) sidewalks located within the Project.

2.11 **Declarant.** Declarant means Mountain Time Investments, LLC, a Montana limited liability company. Declarant may assign all of its rights as Declarant to a third party, by a written instrument recorded in the records of Flathead County, Montana, specifically stating that Declarant's Rights as Declarant under this Declaration are assigned to the third party.

2.12 **Declarant's Rights.** Declarant's Rights means any and all rights granted or reserved by Declarant under this Declaration.

2.13 **Default Assessment.** Default Assessment shall have the meaning ascribed to it in Section 8.5.

2.14 **Driveway.** Driveway means those six (6) driveways within the Project that benefit the Lot in which they are located, as shown on the Site Plan as "Driveway".

2.15 **Drainage Pond.** Drainage Pond shall mean that drainage pond located on Lot 2C, as shown on the Site Plan as the "Drainage Pond".

2.16 **Drainage Ditch.** Drainage Ditch shall mean those two drainage ditches located on the Project, as shown on the Site Plan as "Drainage Ditch 1" and "Drainage Ditch 2".

2.17 **First Mortgage.** First Mortgage means any mortgage, deed of trust, trust indenture, contract for deed, or other similar financial encumbrance granted by an Owner to secure a debt, which is recorded in the office of the Clerk and Recorder of Flathead County, Montana, which encumbers a Lot, and which is first in priority among all such mortgages, deeds of trust, trust indentures or other similar financial encumbrances. There can only be one First Mortgage with respect to a Lot.

2.18 **Governing Documents.** Governing Documents means this Declaration, the Articles of Incorporation and Bylaws of the Association and any Administrative Rules, all of which may be amended from time to time.

2.19 **Lot.** Lot means each parcel of real property within the Project, which is designated as a separately conveyable parcel of land on the Plat, including any such parcel owned by Declarant. The boundaries and acreage of each Lot are delineated on the Plat, and each Lot is identified by the number noted on the Plat.

2.20 **Occupant.** Occupant means a person or persons, other than an Owner, in rightful possession of or rightfully on or using a Lot, including, but not limited to, renters, tenants, lessees, agents, guests, licensees, invitees, or employees.

2.21 **Owner.** Owner means one or more Persons who hold fee simple title to a Lot according to the real property records of Flathead County, Montana, except that a Person purchasing a Lot under a contract for deed which is recorded (or an abstract of which is recorded) in the records of Flathead County, Montana, shall be considered the Owner of the Lot. The term "Owner" shall include Declarant to the extent it is the owner of a Lot. A person holding an interest in a Lot merely as security for the performance of an obligation shall not be considered an Owner.

2.22 **Parking Pad.** Parking Pad means those two (2) parking pads within the Project that benefit the Lot in which they are located, as shown on the Site Plan as "Parking Pad".

2.23 **Period of Declarant Control.** Period of Declarant Control means the period beginning on the date this Declaration is first recorded in the office of the Clerk and Recorder of Flathead County, Montana, and ending on the earlier of: (i) the date which is 10 years later, or (ii) the date on which the Declarant has sold one-hundred percent (100%) of the Lots it owns within the Project. After expiration or termination of the Period of Declarant Control, Declarant, if still an Owner, will continue to have all the rights and duties ordinarily given to Owners under this Declaration.

2.24 **Person.** Person means a natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person, or any other legal entity.

2.25 **Plat.** Plat means the plat of Mountain Time Townhomes, on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

2.26 **Project.** Project means the Property, the townhomes, buildings, all improvements and permanent fixtures of whatsoever kind situated or located on the Property.

2.27 **Site Plan.** Means that site plan for the Project attached hereto as Exhibit B.

2.28 **Special Assessment.** Special Assessment shall have the meaning ascribed to it in Section 8.4.

ARTICLE III
OWNERS ASSOCIATION

3.1 **Association.** The Association shall act as the owners' association for the benefit of the Owners within the Project. The Bylaws may be amended as follows: (i) during the Period of Declarant Control, unilaterally by the Declarant, or, (ii) after the expiration or termination of the Period of Declarant Control, after and affirmative vote of not less than sixty-six percent (66%) of the members of the Association. During the Period of Declarant Control, the Owners may submit proposed amendment(s) to the Bylaws to the Declarant, however, Declarant shall not be required to adopt or consider such proposal(s).

3.2 **Powers.** The Association shall have all the powers set forth in the Governing Documents and of a nonprofit corporation organized under Title 35, chapter 2, MCA, subject only to such express limitations on the exercise of such powers as are set forth in the Governing Documents and/or applicable law. The Association shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by a homeowners' association under applicable law and/or the Governing Documents, and to do and perform any act that may be necessary or proper for, or incidental to, the exercise of any of the powers of the Association. The Association's powers shall include, but not be limited to, the power to: (i) commence and maintain actions or restrain and enjoin any actual or threatened breach of the Governing Documents and enforce the provisions of the Governing Documents; (ii) pay taxes, capital improvement assessments or special assessments and other liabilities which are or would become a lien on any portion of the Project owned or maintained by the Association; (iii) levy Assessments and perfect and enforce liens as hereinafter provided; (iv) enter into contracts including, but not limited to, management contracts; (v) perform the duties set forth herein, including, but not limited to, maintenance, repair, and replacement of the Common Facilities; (vi) adopt, amend and repeal Administrative Rules as it deems reasonable; (vii) impose and collect fines or other charges as it deems reasonable for violations of the Governing Documents; and (viii) acquire and maintain insurance that the Board deems necessary or advisable.

3.3 **Membership.** Each Lot Owner shall be a member of the Association and shall remain a member for a period of the Owner's ownership of a Lot. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned, but all persons owning a Lot shall be entitled to rights of membership in the Association. Membership in the Association shall

be appurtenant to and may not be separated from ownership of a Lot.

3.4 **Voting.** Except as otherwise provided in this Declaration or the Bylaws, each Lot shall be allocated one (1) vote. If a Person owns more than one (1) Lot, that Person shall have as many votes as the number of Lots owned by that Person. If more than one Person has an ownership interest in a single Lot, such Persons must decide among themselves how the vote for that Lot shall be cast. In the case of multiple Owners of a single Lot, unless informed otherwise in writing, it shall be assumed that any one (1) Owner shall be permitted to cast votes and otherwise act for that Lot in all matters concerning the Association.

3.5 **Owners' Address.** Upon acquiring a Lot, the Owner(s) of the Lot shall immediately provide the Association with their/its name(s) and shall provide the Association with the name, address and email address to which the Association will send any notices given pursuant to the Governing Documents. In the event the name, address or email address initially given to the Association shall change, the Owner(s) must provide the Association with the updated name, address and email address in writing. The most recent address and email address provided by the Owner(s) to the Association shall be the proper notice address for all notices given under the Governing Documents, regardless of whether or not received by the Owner(s).

3.6 **Board of Directors.** Except as otherwise provided in the Governing Documents, the Board may act in all instances on behalf of the Association. During the Period of Declarant Control, Declarant shall, in its sole discretion, appoint and/or remove (with or without cause) the Board. After the Period of Declarant Control, or if Declarant relinquishes its management rights, the members of the Association shall appoint, remove and replace the Board. If Declarant so elects, Declarant may relinquish, either on a temporary or permanent basis, the right to appoint the Board; provided that any such relinquishment shall be expressed in writing to the Association. Additionally, if the Declarant relinquishes its right to appoint the Board, whether on a temporary or permanent basis, it shall nonetheless retain the right to remove any such members of the Board until the expiration or termination of the Period of Declarant Control.

3.7 **Personal Liability.** No member of the Board, or any officer of the Association, or Declarant (including any and all members, managers, partners, officers, directors, employees, or authorized agents of Declarant or its partners, affiliates, or parent company or its subsidiaries or affiliated companies), shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person in such person's capacity as a director, officer or manager of the Association, if such person has, on the basis of such information as may be possessed by her, him or it, acted in good faith without willful or intentional misconduct.

3.8 **Officers and Manager.** The Board may appoint officers of the Association and employ a manager or management company to manage, operate and maintain the Common Facilities and other items for which the Association is responsible for maintaining, with such of the administrative functions and such other powers and duties as the Board may delegate from time to time and for such fees as the Board may establish consistent with other provisions of this Declaration.

3.9 **Administrative Rules.** The Board may adopt, repeal, amend or modify Administrative Rules in furtherance of the Bylaws or this Declaration. Any such Administrative Rules must be approved in writing by the Declarant during the Period of Declarant Control. Any Owner desiring to propose amendments, modifications, new Administrative Rules or repeal existing Administrative Rules must do so by written submission to the Board for its consideration.

ARTICLE IV
EASEMENTS

4.1 **Easement Over Access Roadway.** Each Lot shall be benefitted and burdened by a non-exclusive easement for ingress and egress, over and upon the Access Roadway for the Owners to access their Lots.

4.2 **Easement for Common Facilities.** The Association shall have an easement over, upon, and under each and every Lot for it to inspect, maintain, repair, replace, and/or improve the Common Facilities.

4.3 **Utility Easements.**

A. Each townhome Owner grants to all other Owners owning a townhome in the same building a perpetual utility easement for water, sewer, power, telephone, internet, cable television and any other utility and/or service company lines and systems installed beneath or within the townhome or building or within the Lots over or under which any applicable utility lines run. This easement includes the right of the other townhome Owners or their agents to access the location of the applicable utilities as necessary for the installation, maintenance and repair of the applicable utilities.

B. Each townhome Owner grants to the Association a perpetual utility easement for water, sewer, power, telephone, internet, cable television and other utility and/or service company lines and systems installed beneath or within any townhome or building or within the Lots over or under which any applicable utility lines run. This easement includes the right of the Association or its agents to access the location of the applicable utilities as necessary for the installation, maintenance and repair of the applicable utilities.

4.4 **Easement for Encroachment.** Each Lot and its Owner are hereby declared to have an easement for the purpose of accommodating any encroachment due to engineering errors, errors in original construction or settlement or shifting of the building.

4.5 **Drainage Ditch Easements.** Each townhome Owner grants to the Association a perpetual easement over, under, and upon their Lot to inspect, repair, replace and maintain the Drainage Ditch to ensure there is proper drainage of rain, snowmelt, runoff and stormwater. No Owner shall erect, lay, or construct any improvement that restricts, limits or impairs the drainage of rain, snowmelt, runoff, and stormwater to the Drainage Ditch.

4.6 **Drainage Pond.** The Association shall have a perpetual easement over, under, and upon Lot 2C to inspect, repair, replace, and maintain the Drainage Pond to ensure that the Drainage

Pond can contain the Project's drainage of rain, snowmelt, runoff, and stormwater. The Owner of Lot 2C shall not erect, lay, or construct any improvement on the Drainage Pond.

ARTICLE V
ASSOCIATION'S MAINTENANCE OBLIGATIONS

5.1 **Association Maintenance of Common Facilities.** The Association shall maintain, repair and replace the Common Facilities, which shall include, but is not limited to, the Access Roadway, the Drainage Pond and the Drainage Ditch. The Association shall ensure that the Access Road is maintained in good condition to allow year-around access to all Lots and the Drainage Ditch and Drainage Pond are properly draining the Project's drainage of rain, snowmelt, runoff and stormwater.

5.2 **Association Maintenance of Exterior.** The Association shall maintain, repair, and replace the exterior components of the buildings containing the townhomes within the Project, which includes: (i) the replacement of the roof shingles, felt and flashing; (ii) the painting of the exterior siding, trim, and garage doors, and (iii) the replacement of exterior siding, trim, and garage doors. All such exterior maintenance shall be deemed a Common Expense and shared equally amongst all Owners. Owners shall, at their sole cost and expense, maintain, repair, and replace the Parking Pad (provided it is located within their Lot), fencing and patios located on their Lot.

5.3 **Board to Determine Timing.** The Board shall have sole discretion to determine the necessity of and timing of any maintenance, repair or replacement which the Association is obligated to undertake pursuant to this Article V. Notwithstanding the foregoing, painting of the exterior siding and exterior trim of a townhome and/or replacement of the shingles/roofing shall be done uniformly and at the same time for all townhomes within a single building.

5.4 **Maintenance, Repair or Replacement Covered by Owner's Insurance.** Notwithstanding any other provision of this Declaration, in no event shall the Association be responsible for maintaining, repairing or replacing any portion of a building, townhome, Lot or any improvement located thereon, if the insurance the Owner is required to maintain pursuant to Section 6.2 or any other insurance maintained by the Owner covers such maintenance, repair or replacement.

5.5 **Utilities.** To the extent there are any water line(s), sewer line(s), gas line(s), electric wiring, television cabling, fiber-optic, or any other utility that serves more than one (1) Lot but less than all Lots, the Association shall be responsible for any and all costs and expenses for maintenance, repair, and/or replacement of such facilities, and the Association shall equally apportion such costs and expenses to those Owners benefitted by such facilities.

ARTICLE VI
OWNERS' MAINTENANCE OBLIGATIONS

6.1 **Owner is Obligated to Maintain Lot and Townhome.** Other than those areas maintained by the Association as set forth in Article V, each Owner is responsible for the maintenance, repair,

replacement and care of the Owner's Lot, its Driveway, its Parking Pad (provided it is located within their Lot), the townhome and any other improvements located on the Lot. This obligation includes, without limitation, the obligation of the Owner to ensure its Lot does not become unsightly and to control and/or remove all noxious weeds on their Lot in accordance with any applicable statute, regulation or ordinance governing noxious weeds. No Owner shall paint, refurbish, repair, replace or modify the exterior surfaces or roof of their townhome or Driveway without the prior written consent of the Board. If any Owner fails to perform his, her or its maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Lot and the Owner thereof as a Default Assessment in accordance with further provisions of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry. For purposes hereof, reasonable notice and opportunity to cure the problem shall be thirty (30) days following Owner's receipt of the Association's notice.

6.2 **Owner's Casualty Insurance.** Each Owner shall maintain physical damage/casualty insurance for the Owner's townhome in an amount equal to the replacement value of the townhome. The Association may require from time to time that each Owner provide the Association with proof of such insurance and that such insurance remains in continuous force and effect. Should any Owner fail to provide proof of insurance upon request, the Association may purchase the required insurance, and the costs of such insurance may be levied as a Default Assessment against such Owner. Each Owner covenants and agrees to use the proceeds of any physical damage/casualty insurance to reconstruct or repair the Owner's townhome as required by the following Section.

6.3 **Damage to Townhome.** If a townhome or portion thereof is damaged through an act of God or other casualty, the affected Owner shall promptly have their townhome repaired and rebuilt in substantial conformance with the architectural plans and specifications of the townhome building. Such rebuilding or repair shall be completed within a reasonable time, but not to exceed twelve (12) months following the date of the casualty. In the event such damage or destruction includes damage to a party wall or shared roof and the damage or destruction was caused solely by the neglect or willful misconduct of a townhome Owner, any expense incidental to the repair or reconstruction of such party wall or shared roof shall be borne solely by such wrongdoer. If the townhome Owner refuses or fails to pay the cost of such repair or reconstruction, the Association shall have the right to complete such repair and reconstruction in substantial conformance with the original plans and specifications of the affected building, and the Association shall thereafter have the right to assess said townhome Owner for the costs of such repair and re-construction as a Default Assessment.

6.4 **Snow Removal.** Each Owner shall be responsible for snow and ice removal on their Lots. This includes, without limitation, its Driveway, walkways and sidewalks located on the Owner's Lot. The only portion of a Lot for which the Owner is not responsible for snow and ice removal is the Access Roadway. Notwithstanding the foregoing, the Association may elect to be responsible for all snow and ice removal within the Project and charge the same to the Owners as a Common Expense.

6.5 **Utilities.** To the extent there is any water line, sewer line, gas line, electric wiring,

television cabling, fiber-optic, or any other utility that serves only one (1) Lot, the Owner of said Lot shall be responsible for any and all costs and expenses for maintenance, repair, and/or replacement of such facilities.

ARTICLE VII
PARTY WALLS AND ROOFS

7.1 **Party Walls.** The townhomes comprising each building are single family attached units with common walls dividing the attached units known as "party walls." The center line of a party wall is the common boundary of the adjoining units. Each common wall in a townhome building shall be a party wall, and any party to said wall, and their heirs, successors, and assigns shall have the right to use the party wall jointly with the other party to said party wall as herein set forth. The term "use" shall and does include normal interior usage such as paneling, plastering, decoration, erection of tangent walls and shelving but prohibits any form of alteration which would cause an aperture, hole, conduit, break or other displacement of the original material forming said party wall. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.2 **Party Roof.** The portion of the roof of each building which covers a party wall, any and all roof structure support, and any and all appurtenances to such structures, including without limitation, the shingles or other roof covering, roof trim, and roof drainage fixtures, shall be collectively referred to as "shared roofing". The shared roofing shall not be considered a Common Facility. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to the shared roofing.

7.3 **Sharing of Repair and Maintenance of Party Walls.** The cost of repairing and maintaining each side of a party wall shall be borne by the Owner using said side, except as otherwise provided herein. The cost of reasonable repair and maintenance of any other portion of a party wall and the shared roofing (subject to any obligation of the Association contained in other provisions of this Declaration to replace the shingles, felt, and flashing) shall be shared equally by the Owners who make use of the party wall and shared roof. However, in the event any damage or destruction of a party wall or shared roof is caused solely by the neglect or willful misconduct of an Owner or the Owner's Occupant, any expense incidental to the repair or reconstruction of such wall or shared roof shall be borne solely by such Owner.

7.4 **Destruction by Fire or Other Casualty.** If a party wall or shared roof is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has use of the party wall or shared roof may restore it. If other Owners also have use of the party wall or shared roof, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right of the restoring Owner to call for a larger contribution from an Owner who may have a greater liability under any rule of law regarding liability for negligent or willful acts or omissions.

7.5 **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Owner's Lot and shall pass to such Owner's successors in title.

ARTICLE VIII
ASSESSMENTS

8.1 **Assessments.** The Owner of any Lot is deemed to covenant and agree, to pay to the Association assessments for Common Expenses as provided herein, including Annual Assessments, Special Assessments, and Default Assessments (collectively "Assessments"). The Assessments levied by the Association shall be used exclusively to promote the health, safety, and general welfare of the Owners and the Project, for the improvement and maintenance of Common Facilities, and such other services and areas of Association responsibility as defined by the Governing Documents. If the Board reasonably determines that the need for maintenance, repair or replacement of the Common Facilities or any areas or items of Association responsibility is caused through the willful or negligent act of an Owner, or an Owner's Occupant, the cost of such maintenance, repairs or replacement shall be added to and become a part of the Assessment to which such Lot is subject. Prior to selling a Lot or entering into a lease or rental agreement for a Lot, the Owner shall provide a written copy of the Governing Documents to the prospective buyer or tenant (whichever applies).

8.2 **Initial Contribution.** In addition to the Assessments provided herein, upon the initial sale of a Lot from Declarant to a third party and upon the subsequent resale of any Lot by an Owner, the purchaser shall pay the sum of $1,000.00 per Lot as an initial contribution to the working capital and reserves of the Association. Such initial contribution shall not be considered an advance payment of any Assessment and shall not be refundable upon resale of the Lot.

8.3 **Annual Assessment.**

A. The Board of Directors may levy upon and subsequently collect from each Owner an Annual Assessment for each Lot. The Annual Assessment shall reflect the Board's estimate of the requirements of the Association to cover items including, without limitation, the cost of maintenance, repair and operation of the Common Facilities and such other services and areas of Association responsibility as defined by the Governing Documents; expenses for the management and operation of the Association and the Project; premiums for insurance coverage as deemed desirable or necessary by the Board; snow and ice removal from the Common Facilities, including, but not limited to, the Access Roadway; routine renovations within the Common Facilities; the Association's legal and accounting fees; payment of any deficit remaining from a previous Assessment period; and the creation or supplementation of a reserve fund for the maintenance, repair and replacement of the Common Facilities and the exterior of the townhomes (as required to be maintained by the Association as set forth in Article V).

B. The Annual Assessment shall be equal for each Lot, unless the Board determines in good faith that a portion of the Annual Assessment benefits fewer than all the Lots, in

which case, such portion shall be assessed only against the benefited Lots in equal proportions. Maintenance, repair and replacement of the Access Roadway, Drainage Ditch and Drainage Pond shall be considered to benefit all Lots equally, and such costs shall be apportioned equally among all Lots.

C. Payment of the Annual Assessment shall be due and payable either annually or in installments, as the Board may determine from time to time.

8.4 **Special Assessment.**

A. The Board of Directors may, from time to time, levy upon and subsequently collect from each Owner a Special Assessment for each Lot.

B. Any Special Assessment shall be equal for each Lot, unless the Board determines in good faith that all or a portion of the Special Assessment benefits fewer than all the Lots (such as a Special Assessment levied to perform maintenance, repair or replacement of utilities that serve more than one (1) Lot but less than all Lots), in which case all or such portion shall be assessed only against the benefited Lots in equal proportions. Maintenance, repair and replacement of the Access Roadway, Drainage Ditch, and Drainage Pond shall be considered to benefit all Lots equally, and such costs shall be apportioned equally among all Lots.

C. Payment of the Special Assessment shall be due and payable as the Board may provide.

8.5 **Default Assessment.**

A. Any cost or expense (including attorneys' fees) incurred by the Association as a result of the failure of an Owner to abide by the provisions of the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents, or any interest, late charge or other monetary obligation of an Owner under the Governing Documents (other than Annual or Special Assessments) constitutes a Default Assessment. If an Owner or and Owner's Occupant should cause damage to the Common Facilities or any property or improvement for which the Association is responsible for maintenance, repair, or replacement, the Owner shall pay for the cost of the maintenance, repair or replacement of the damage caused. If such payment is not made within thirty (30) days of the date the Association sends a bill for such cost, a Default Assessment may be levied against the Owner's Lot for such costs.

B. Default Assessments are levied against the Lot or Lots of an Owner who incurs a Default Assessment and shall be immediately due and payable by the Owner, upon written notice from the Association of the amount of the Default Assessment.

8.6 **Remedies for Nonpayment of Assessment.** Any installment of an Assessment which is not paid within thirty (30) days after its due date will be delinquent. In the event of such delinquency, the Association may take any or all of the following actions:

A. Assess a reasonable 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 uniform rates set by the Board, not to exceed the maximum rate of interest permitted by law;

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. Bring an 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 as set forth in more detail below.

The remedies provided under this Declaration will not be exclusive, and the Association may enforce any other remedies to collect delinquent Assessments as may be provided by law.

8.7 **Assessment Lien.** Any Assessment chargeable to a Lot will constitute a lien on the Lot, effective on the due date of the Assessment. If the Assessment is not paid within thirty (30) days of its due date, the Association may prepare and record a written lien statement 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 delinquent Assessment amounts then owing. Any such lien statement will be signed by an officer or director of the Association, and will be served upon the Owner of the Lot by mail to the address that the Association has in its records for the Owner. Thirty (30) days following the mailing of such lien 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.

8.8 **Liability for Assessment.** All Owners of a Lot are personally responsible, jointly and severally, for all Assessments which become due at the time of their ownership, including interest, late charges, costs, expenses and attorney's fees incurred in collection of such Assessments. All successors to the fee simple title of a Lot, except as provided in Section 8.9 and Section 8.10, will be jointly and severally liable with the prior Owner or Owners for any and all unpaid Assessments, including interest, late charges, costs, expenses and attorney's fees incurred in collection of such Assessments. However, any successor will be entitled to rely on the statement of status of Assessments given by the Association under Section 8.11.

8.9 **Priority of Lien for Assessment.** 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, or any other liens made superior by statute; and

C. The lien for all sums unpaid on a First Mortgage recorded before the date of filing of a written lien statement for delinquent Assessments, 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 filing of a written lien statement for delinquent Assessments. 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 attorney's fees against the Lot which accrue prior to the time such First Mortgagee or purchaser acquires title to the Lot.

All other Persons who hold a lien or encumbrance of any type *not* described in subsection A., B. or C., above, will be deemed to consent that their lien or encumbrance will be subordinate to the Association's future liens for Assessments, interest, late charges, costs, expenses and attorney's fees, as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance

8.10 **Protection of First Mortgage.** No violation or breach of, or failure to comply with, any provision contained in this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any First Mortgage on any property taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of Flathead County, Montana, prior to the time of recording in said office of an instrument describing such property and listing the name or names of the Owner or Owners and giving notice of such violation, breach or failure to comply. No violation, breach, failure to comply or action to enforce this Declaration shall affect, defeat, render invalid or impair the title or interest of the holder of any First Mortgage or the title or interest acquired by any purchaser upon foreclosure of any First Mortgage or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser upon foreclosure shall, however, take the Lot(s) subject to this Declaration.

8.11 **Statement of Status of Assessments.** On written request, the Association will furnish to an Owner or his, her or its 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 information contained in such statement, when signed by an officer or director of the Association, 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.

8.12 **Declarant Not Responsible for Assessments During Period of Declarant Control.** The Declarant, although possessing management rights during the Period of Declarant Control, shall

not be responsible for any Assessment until the expiration or termination of the Period of Declarant Control.

ARTICLE IX
RESTRICTIVE COVENANTS

9.1 **Residential Use.** Each Lot may be used only for single-family residential purposes. There shall be no commercial or business use of a Lot. The use of a portion of any Lot for home-office purposes by the Owner or Occupant thereof shall be considered a residential use only if the Lot is used primarily for residential purposes, and if such business use (i) is not detectable by sight, sound or smell from the exterior of the residence, (ii) is consistent with applicable zoning and does not violate applicable law; (iii) does not increase the liability or casualty insurance premium or obligation of the Association or of other Owners within the Project; and (iv) does not create any substantial vehicular traffic to and from the Project.

9.2 **No Subdivision of Lots.** No Lot shall be further subdivided in any manner.

9.3 **Setbacks.** All applicable setbacks of Flathead County, the City of Whitefish, or any other governmental organization with authority over the Property shall apply to and control the setbacks of any buildings or improvements constructed on the Lots.

9.4 **Utilities.** All utilities shall be placed underground.

9.5 **Sewer and Water Systems.** Each Lot shall connect to the City of Whitefish water and sewer systems.

9.6 **External Fixtures.** Unless approved by the Board in writing, no solar panels, awnings, ornamental screens, porch or patio or balcony enclosures, or sunshades shall be constructed, erected, placed or maintained on any townhome or any Lot.

9.7 **Satellite Dishes.** Prior to the installation of any satellite dish, the Owner must obtain written approval from the Board as to the location of the satellite dish. Any satellite dish must be less than 24-inches (24") in diameter, must be mounted on the roof of the Owner's townhome and must be located so as to not be visible from the front of the townhome.

9.8 **Outdoor Lighting.** Ground level lighting of patio, deck, driveway and entryway areas on any Lot that is directed downwards and does not light areas outside such Lot or create glare is permitted. No other exterior lighting is permitted unless approved by the Board in writing.

9.9 **House Numbers.** Owners shall maintain house numbers on the townhouse. All house numbers shall be visible from the entrance of the Driveway.

9.10 **Lot Landscaping.** Each Owner shall have the responsibility to maintain the grounds, lawn and any landscaping on their Lot, including the removal of weeds. If an Owner fails to maintain the grounds, lawn and any landscaping on their Lot, the Association shall have the right to notify the Owner, and if the Owner does not maintain the areas within thirty (30) days of its receipt of

the Association's notice, the Association may have such maintenance performed as the Association shall determine is reasonable, and the cost of such maintenance shall be assessed against the Owner and the Owner's Lot as a Default Assessment.

9.11 **No Temporary Structures.** No structure of a temporary character, including, but not limited to, campers, camper trailers, recreational vehicles, unfinished basements, tents or garages shall be used on any Lot at any time as a residence, either temporarily or permanently.

9.12 **Noise.** No townhome shall be used in any manner or for any purposes which results in noise levels which unreasonably interferes with the other Owners' use and enjoyment of their Lot.

9.13 **Parking.** Except for the Parking Pads, Owners and their Occupants may only park their vehicle in the garage located on an Owner's Lot, Owners and their Occupants shall not park any vehicle on the Driveway located on their Lot (unless it is for less than thirty (30) consecutive minutes), the Access Roadway or on any other location within the Project. No abandoned or inoperable vehicle shall be parked or stored within the Project.

9.14 **Parking Pad.** Notwithstanding anything contained herein to the contrary, the Owners of Lots 2A and 3A may park their vehicle or their Occupant's vehicle on the Parking Pad that is located within their Lot. Except for the Owners of Lots 2A and 3A (inclusive of their Occupants), no other Owner or their Occupants may park on a Parking Pad.

9.15 **Animals.** No pets except for domestic dogs and domestic cats owned by an Owner or Occupant may be kept or maintained in any townhome, on any Lot or in the Project. No other animals, including, without limitation, livestock, horses, swine, poultry, birds, reptiles, rodents or snakes shall be kept, maintained, or bred in any townhome, on any Lot or in the Project. An Owner may keep and maintain not more than a combined total of two (2) domestic dogs or domestic cats (not two of each, but a total of two, in whatever combination an Owner may choose) on an Owner's Lot, provided such animals are not kept, bred or raised for commercial purposes. An Owner shall not be permitted to keep or maintain in the owner's townhome, on the Owner's Lot or on or within the Project any dog(s) or cat(s) which, in the reasonable determination of the Board, are determined to unreasonably interfere with the other Owners' quiet enjoyment of their Lot as a result of excessive barking, whining, noise, aggressive behavior or the like, or are determined to be a nuisance or threat to the safety of the Owners, or the Owners' Occupants. Pets constituting a nuisance may be ordered by the Board to be kept within the Owner's townhome or ordered to be removed from the Project. All dogs and cats must be kept on a leash at all times while in the Project except when contained upon the Owner's Lot or within the Owner's townhome. Owners shall be responsible for and must clean up after their pets.

9.16 **Nuisances.** No nuisance shall be permitted on or within any Lot which is the source of significant annoyance, or which materially interferes with the peaceful enjoyment, or an Owner's possession and/or use of their Lot. As used herein, during the Period of Declarant Control, the term "nuisance" shall not include any activities of Declarant or its agents, contractors or designees, which are reasonably necessary for the development and construction of the Project.

9.17 **Garbage and Refuse Disposal.** Owners shall arrange and pay for the weekly pick-up of garbage from their Lots. All rubbish, trash, garbage and waste shall be kept in appropriate garbage receptacles with lids. All garbage receptacles and the areas in the vicinity of the receptacles shall be kept in clean and sanitary condition. Garbage receptacles shall be kept within each Owner's garage or otherwise shielded from public view. No burning or burying of trash will be allowed on any Lot. The Association may elect to arrange and pay for weekly pick-up of all garbage from the Lots and charge the same to the Owners as a Common Expense.

9.18 **Signs.** The Declarant, during the Period of Declarant Control, shall have the right to place signs within the Project. Otherwise, no signs, billboards, banners, or advertising devices of any nature shall be erected or maintained on any part of the Project, any Lot or any townhome, except for one (1) unlighted sign not exceeding six (6) square feet placed on a Lot advertising the Lot for sale or lease.

9.19 **Firearms and Fireworks.** No discharge of firearms or fireworks of any kind is permitted on or within the Property.

9.20 **No Storage on Access Roadway, Drainage Ditch or Drainage Pond.** No Owner or Occupant shall obstruct the Access Roadway, Drainage Ditch or Drainage Pond or store anything in the Access Roadway, Drainage Ditch or Drainage Pond.

9.21 **Prohibition of Certain Activities.** No Owner or Occupant shall engage in activity within the Project that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body. Subject to applicable law, the Association may adopt Administrative Rules further defining nuisance type behavior prohibited in the Project.

9.22 **Rentals.** Rental and leasing of a townhome, for any length of time, shall be permitted so long as such rental or lease conforms with the requirements imposed by any and all applicable city, county or state law, regulation or ordinance. Any Owner who shall rent, lease or allow others to occupy his, her or its townhome shall be responsible for assuring compliance by the Occupants with the Governing Documents. Any default of or breach of the Governing Documents by an Occupant shall also be deemed a breach of the Governing Documents by the Owner. Any expenses incurred by the Association, including attorneys' fees and costs of suit, resulting from an Occupant's breach of the Governing Documents shall be repaid to the Association by the Owner.

9.22 **Covenants to be Incorporated into Leases.** Owners shall require that its Occupant(s) comply with all provisions of the Governing Documents by either: (i) including a provision in any leases or rental agreements requiring the Occupant, tenant or renter to comply with all provisions of the Governing Documents; or (ii) requiring any Occupant, tenant or renter to sign a separate acknowledgment and agreement requiring the Occupant, tenant or renter to comply with all provisions of the Governing Documents.

ARTICLE X
ARCHITECTURAL REVIEW

10.1 **Review.** In order to maintain harmony of external design and location in relation to surrounding structures, topography and to otherwise assist in achieving the general purposes of this Declaration, the following activities shall be subject to architectural review by the Board:

A. Construction of any dwelling, structure, or other improvement on any Lot.

B. Exterior modification of any townhome, dwelling, structure, or other improvement.

C. Landscaping and modifications to landscaping.

None of these activities shall be undertaken without prior written approval of the Board. Alterations or remodeling which are completely within a townhome and which do not change any portion of the exterior of the townhome are not subject to architectural review by the Board.

10.2 **Declarant Exempt from Design Review.** To facilitate the development of the Lots, the Declarant, during the Period of Declarant Control, may construct townhomes, construct other improvements to Lots, complete landscaping, and take such other actions for the development and sale of Lots and townhomes without requiring Board approval or complying with any other requirement of this Article X.

10.3 **Board Review Materials.** The Owner shall provide the Board with the following materials for its architectural review:

A. A site plan showing the location of all improvements proposed to be built or revised. The plan must also show finished grade elevations, exterior colors, materials, finishes and outdoor lighting.

B. A landscaping site plan that clearly identifies the landscaping features and identifies any and all trees, shrubs, or plants incorporated therein.

C. Any other materials and/or information reasonably necessary or advisable for the Board to perform its architectural review.

In addition to the above, the applicant shall submit the fee for architectural review which shall initially be the sum of $100, to be paid when plans are submitted. The Board may, in its sole discretion, revise the review fee from time to time.

10.4 **Action by Board.** After receipt of all required plans and other application materials reasonably required, the Board shall review the proposed improvement or alteration to determine whether it is in accordance with the goals stated in Section 10.1 and is otherwise in conformance with the Governing Documents. The Board may engage outside consultants and other professionals to review submissions, the cost of which shall be borne by the Owner making the application or request. The Board shall respond to the proposal in writing, stating its approval or the reasons for its disapproval within thirty (30) days of its receipt of all required plans and/or other materials reasonably required. The Board may monitor construction to ensure that the approved plans are being followed.

10.5 **Guidelines.** The Board may but shall not be required to develop guidelines for its architectural review.

10.6 **Deposit.** The Board may require each Owner or the Owner's contractor to provide a deposit in an amount set by the Board to ensure that the Project is not damaged during construction and that the provisions of the Governing Documents are not violated during construction. If the construction is completed without such damage or violation, the deposit shall be returned to the Owner or contractor (without interest). If there has been such damage or violation(s), the deposit may be applied toward remedying such damage or violation(s). If the Owner or contractor disagrees that such damage or violation(s) have occurred, the Board shall give the Owner or contractor an opportunity to meet with the Board and provide the Board with such evidence as the Owner or contractor may desire. After considering such evidence, the Board shall make a determination of whether such damage or violation(s) occurred, including the amount thereof, and the determination of the Board, made in good faith, shall be final. If the cost of remedying any such damage or violation(s) exceeds the deposit amount, the Owner shall be responsible for any excess costs as a Default Assessment.

10.7 **Liability.** It is not the function of the Board to determine the adequacy, completeness, or safety of plans, or whether plans submitted comply with any building codes or other regulations, or to assure that any construction is done properly or in full accordance with the plans. Neither the Declarant, the Association, the Board nor their respective members, officers, directors, employees or agents shall be responsible or liable for the defects in any plans or specifications submitted, revised or approved under this Article, nor for any defects in construction pursuant to such plans and specifications. Neither the Association nor the Board shall be liable to any person for any official act of the Board in connection with submitted plans and specifications, except to the extent the Board acted with malice.

10.8 **Other Required Approvals.** Compliance with the design review process under this Article is not a substitute for compliance with any applicable building, zoning and other regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. Approval of plans and specifications under this Article does not in any way assure compliance with or approval by any government agency of their respective building requirements or regulations.

ARTICLE XI
DURATION AND AMENDMENT

11.1 **Duration of Declaration.** The provisions of this Declaration are intended to be easements and covenants running with the land, and are intended to be perpetual, except as amended or terminated as provided below. If any provision contained in this Declaration is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation, such provisions shall continue and remain in full force and effect for the maximum period permitted by law, or until the provisions contained in this Declaration are amended or terminated as provided below, whichever first occurs.

11.2 **Amendment during Period of Declarant Control.** During the Period of Declarant Control, Declarant may unilaterally repeal or amend, in whole or in part, this Declaration.

11.3 **Amendment after Period of Declarant Control.** After the Period of Declarant Control, this Declaration may be repealed or amended, in whole or in part, as provided in this Section 11.3. Any amendment shall require the consent of sixty-six percent (66%) of the Lot Owners. Such consent may be evidenced by written consent or by vote at a regular or special meeting of the members of the Association, or by a combination of written consents and votes. When approved, the amendment, together with a certification of at least one (1) officer or director of the Association certifying that the required consent of Owners was obtained, shall be recorded in the records of Flathead County, Montana.

11.4 **Unilateral Amendment by the Board.** At any time, the Board may unilaterally amend this Declaration (1) if such amendment is solely to comply with applicable law or correct a technical or typographical error, (2) if such amendment does not adversely alter any substantial rights of any Owner or mortgagee, or (3) in order to meet the guidelines or regulations of a mortgagee or insurer including, but not limited to, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any similar agency. Such amendments shall not require approval of any Owners.

ARTICLE XII
MISCELLANEOUS

12.1 **Variances.** To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of this Declaration, the Board shall have the authority to grant reasonable variances from the provisions of this Declaration. No variance shall materially injure or materially adversely affect any other part of the Property or other Owner(s) within the Project. No variance granted pursuant to the authority of this Section shall constitute a waiver of any provision of this Declaration as applied to any other party or any other part of the Property, and no variance may be granted to permit anything that is prohibited by applicable zoning ordinances or similar law. All provisions of this Declaration not affected by the grant of a variance shall continue to apply with full force and effect to the Lot for which the variance was granted.

12.2 **Enforcement and Remedies.**

A. Each provision contained in this Declaration shall be enforceable by the Association, Declarant (during the Period of Declarant Control) and/or by any Owner who has first made written demand on the Association to enforce such provision and thirty (30) days have lapsed without action having been taken by the Association. Any enforcement action may be by a proceeding against the party or parties violating or attempting to violate any one or more of the provisions of this Declaration. This right of enforcement shall include the right to seek such relief as may be provided at law or in equity, including but not limited to a temporary or permanent injunction to prevent or abate such violation and/or a suit or action to recover damages.

B. Any action or omission which violates any provisions of this Declaration is declared to be a nuisance. Every remedy allowed by law or in equity against an Owner shall be applicable in case of any such violation and may be exercised by the Association, Declarant (during the Period of Declarant Control) and/or any other Owner who has given the notice required above.

C. In addition to the rights stated above, the Association and/or the Declarant (during the Period of Declarant Control) shall have the right to enter upon any part of the Property (including the Lots) at any reasonable time to inspect for possible violation(s) of this Declaration. Where the inspection shows that a violation(s) of this Declaration exists, the Association and/or the Declarant (during the Period of Declarant Control) shall have the right to enter, abate and remove any structure, improvement, landscaping, thing or condition causing the violation, at the expense of the Owner of the Lot where the violation exists, without any liability to the Owner for trespass or any other claim resulting from the entry, abatement or removal.

D. The remedies specified in this Section are cumulative. The remedies specified in this Section are not intended to be exclusive and do not preclude resort to any other remedy at law or in equity.

E. No delay or failure on the part of any aggrieved party to pursue any available remedy with respect to a violation of any provision of this Declaration shall be held to be a waiver by that party of, or an estoppel of that party to assert any right available to the party upon the recurrence or continuation of the violation or the occurrence of any different violation. No provision of this Declaration shall be construed so as to place upon the Declarant or any other party any duty to take any action to enforce this Declaration.

12.3 **Notices.** All notices required to be given under this Declaration shall be in writing. Any notice to be given to an Owner shall be delivered either personally, by email, by first class United States mail, postage prepaid, or by overnight delivery service. Any notice to be given to a First Mortgagee or the Association shall be delivered either personally, by first class United States mail, postage prepaid, or by overnight delivery service. Any notice personally delivered shall be deemed given upon delivery. Any notice sent by email or overnight courier shall be deemed given the day after it is sent. Any notice sent by United States mail shall be deemed given three days after being mailed.

A. Notice to an Owner shall be to the most recent address or email address furnished by such Owner in writing to the Association in accordance with Section 3.5, or if no such address shall have been furnished, then to the street address of such Owner's Lot. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners, and upon delivery to one of the co-Owners shall be deemed delivered to all such co-Owners.

B. Notice to a First Mortgagee shall be to the most recent address furnished by such First Mortgagee in writing to the Association for the purpose of such notice or, if no such address shall have been furnished, to any office of the First Mortgagee.

C. Notices to the Association shall be delivered to the registered agent of the Association at the office of the registered agent of the Association as it appears on file with the Montana Secretary of State at the time such notice is given

12.4 **Limited Liability.** Neither the Declarant or the Association or their respective officers, directors, employees or agents shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

12.5 **Successors and Assigns.** Except as otherwise provided herein, the provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

12.6 **Severability.** Invalidity or unenforceability of any provision contained in this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

12.7 **Captions.** The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

12.8 **Construction.** When necessary for proper construction, the masculine of any word used in any provisions contained in this Declaration shall include the feminine or neuter gender, and the singular the plural, and vice versa.

12.9 **Attorneys' Fees.** In the event of a dispute arising under any provision contained in this Declaration, the prevailing party shall be entitled to its reasonable costs and attorneys' fees incurred.

12.10 **Conflicting Provision.** In the case of any conflict between this Declaration, the Articles, the Bylaws, or Administrative Rules, this Declaration shall control.

12.11 **Municipal Facilities Exclusion.**
Montana Code Annotated § 76-4-122(2)(c) Declaration. The townhomes identified herein are excluded from review under the Montana Subdivision and Platting Act as provided by the following language of the Montana Code Annotated § 76-4-125(1)(d)(iii):

MCA 76-4-125 (1) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

. . .
(d) as certified pursuant to 76-4-127:
. . .

(iii) divisions or previously divided parcels of land that are exempt from the Montana Subdivision and Platting Act review under 76-3-203.

DATED this 9 day of June, 2023

[Signature on following page]

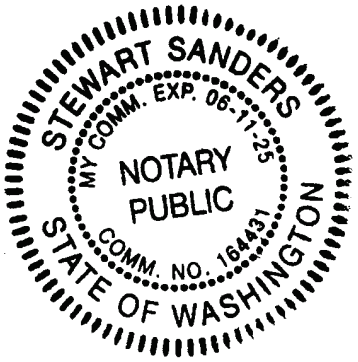
Declarant: **Mountain Time Investments, LLC**

By: Lawrence Hansen
Manager of Mountain Time Investments, LLC

STATE OF WA)
: ss
County of SNOHOMISH)

This instrument was acknowledged before me on JUNE 9, 2023, by Lawrence Hansen, Manager of Mountain Time Investments, LLC.

(SEAL)



Notary Public for the State of WA

EXHIBIT A
(Legal Description of the Property)

The North Half and the South Half of Lot 3 of Block 1 of Murray's Homes Addition to Whitefish, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

Shown on Retracement Certificate of Survey No. 16966

AND

Lot 2 of Block 1 of Murray's Homes Addition to Whitefish, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

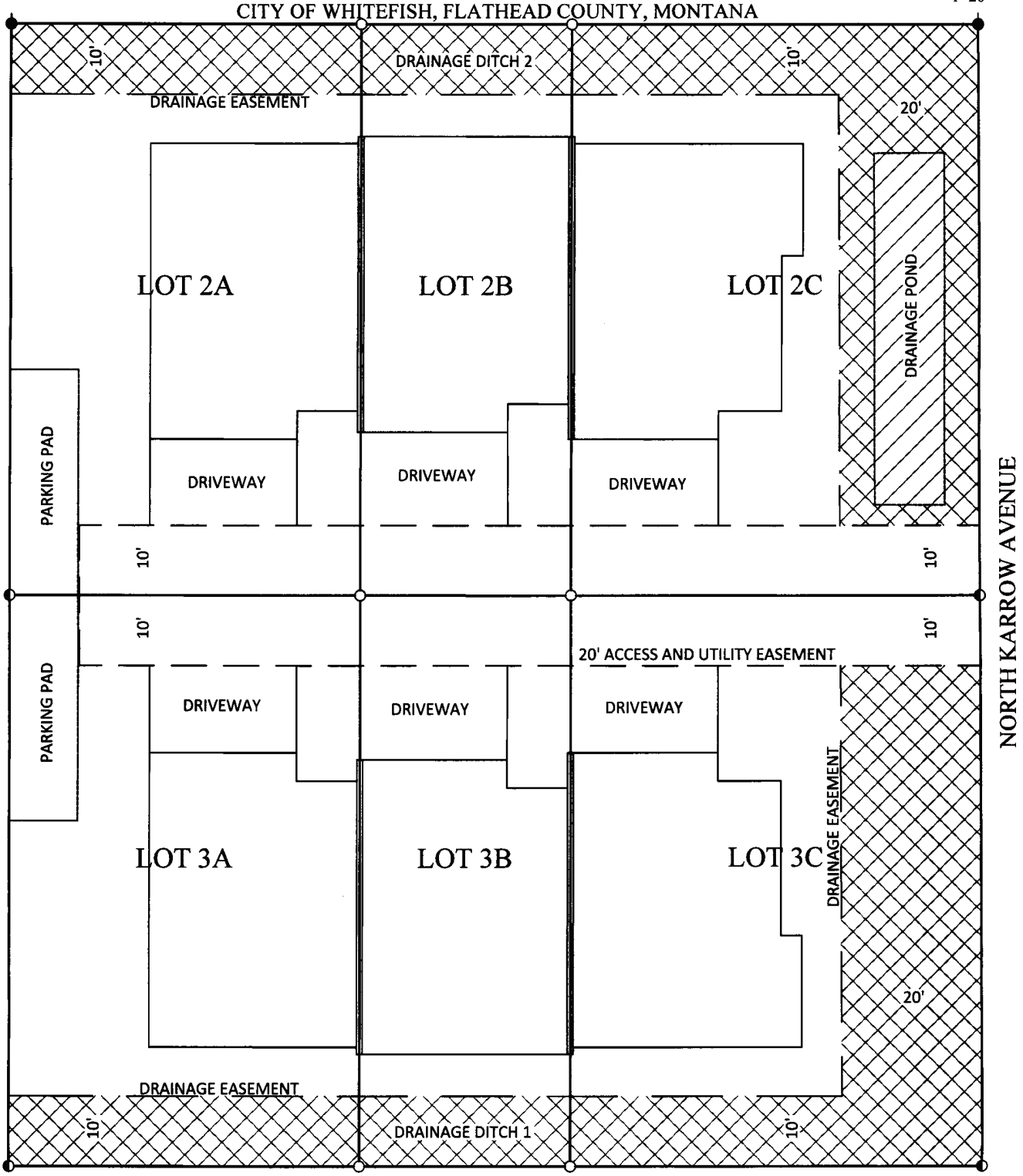
EXHIBIT B
(Site Plan)

MOUNTAIN TIME TOWNHOMES

DRAINAGE AND ACCESS EASEMENTS

SECTION 35, T.31N., R.22W., P.M.M,

CITY OF WHITEFISH, FLATHEAD COUNTY, MONTANA



WHITEFISH LAND SURVEYING
Craig Wickham, PLS
P.O. Box 1291
Whitefish, MT 59937
craig@whitefishlandsurveying.com
(406)471-8195

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