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Debbie Pierson, Flathead County MT by SC

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AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS EASEMENTS, CHARGES AND LIENS

ROSEWATER

THIS DECLARATION is made this ___ day of January, 2017, by RIDGELINE CAPITAL, LC, a Utah company, hereinafter called "Declarant."

WITNESSETH:

WHEREAS, as of this date, the existing DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS EASEMENTS, CHARGES AND LIENS ROSEWATER are set forth in a document placed of record on September 27, 2016, under Doc. No. 201600021128;

AND WHEREAS, after conferring with prospective purchaser of Lots, at a time when Declarant is permitted to act, pursuant to Article XI, Section 11.3 Amendments by the Developer, of said existing Declaration of Covenants, Conditions and Restrictions Easements, Charges and Liens Rosewater, which reads:

> "Section 11.3 Amendments by the Developer. At any time prior to the Control Transfer Date, Developer may amend this Declaration in any manner it desires, with the exception of configuring Lots, lakes and water ski attributes, by an instrument in writing filed and recorded with the Clerk and Recorder of Flathead County, Montana, without the approval of any other Member or Owner or any mortgagee...."

AND WHEREAS, Declarant hereby acts to amend the Declaration of Covenants, Conditions and Restrictions Easements, Charges and Liens Rosewater recorded on September 27, 2016, under Doc. No. 201600021128.

NOW THEREFORE, the Declarant does hereby amend the Declaration of Covenants, Conditions and Restrictions Easements, Charges and Liens Rosewater recorded on September 27, 2016, under Doc. No. 201600021128, records of Flathead County, Montana, by removing certain numbered sections for certain Articles entirely and replacing those same numbered sections for those certain Articles as follows:

ARTICLE II

RESERVATIONS, EXCEPTION AND DEDICATIONS

Section 2.8 Private Streets. The Plat designates private streets which may be used for ingress and egress by each Owner to the Lot it owns. The streets and any associated entry gate(s) within Rosewater shall constitute a portion of the Common Property which is subject to the jurisdiction and administration by the Association and shall be maintained according to the Conditions of the Flathead County Board of Commissioners. Design and configuration of subdivision roads and vehicle parking spaces shall comply with the Approved Conditions of the Flathead County Board of Adjustment. Assignment of street names and physical addresses of houses and streets shall comply with the Conditions of the Flathead County Board of Commissioners. The road approach of Rosewater Lane onto Rose Crossing shall comply with Conditions of the Flathead County Board of Commissioners. Stop signs shall be installed to comply with the Conditions of the

Flathead County Board of Commissioners. The Developer will be responsible to improve the parking area of Common Area A to the standard noted on the Approved Conditions of the Flathead County Board of Adjustment.

In addition to the other provisions appearing within this Article, the Board of Directors of the Association is specifically authorized to recommend, adopt, implement and enforce rules, regulations, mechanisms and procedures governing use of the entry Gates and private streets covering items such as (but not necessarily limited to):

(a) Identification and entry programs for Owners, residents and members, their respective immediate families, their guests and vehicles owned or driven by any of them;

(b) Speed limits, designated parking areas, restricted parking areas and no parking areas;

(c) Signs and graphics to provide announcements to unauthorized personnel concerning potential criminal trespass matters;

(d) A "fines" system through which the Association can levy and collect fines from its Members for violations of the applicable rules and regulations; and

(e) Disclaimers of liability for any and all matters or occurrences on or related to the Common Property.

ARTICLE IV

ADDITIONAL USE RESTRICTIONS

Section 4.7 Erosion Control. Each Waterfront Lot owner shall be responsible for controlling erosion and preventing the entry of silt or other inimical materials into the lake or drainage structures through any stormwater runoff across, along or otherwise crossing over the Lot. Each Waterfront Lot owner shall be responsible for maintaining vegetation or other means of erosion control along all drainage swales and accumulated runoff points so as to prevent the entry of silt into the lakes. Until such time as sufficient vegetation to control erosion has been established, silt fencing or other artificial barriers may be used for this purpose. All re-vegetation shall be performed according to and comply with the Conditions of the Flathead County Board of Commissioners.

The integrity of the shoreline shall be monitored by and controlled by the Rosewater Water Ski Club. Wake enhancement devices are not allowed. Water ski activities may cause wash-back and erosion along the shoreline. The preventive methods at or below the high water mark of the lakes shall be the sole responsibility of the Rosewater Water Ski Club. Coordinated work activities between Rosewater Water Ski Club and each Waterfront Lot owner, who is responsible for care above the high water mark of the lakes, shall be conducted at meetings called for that purpose by any affected person or entity.

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE

Section 5.3 Effect of Inaction. Approval or disapproval as to architectural control matters as set forth in the plan preceding provisions of this Declaration shall be in writing. The authority exercising the prerogative of approval or disapproval (whether the Developer or the ACC) shall provide a written response indicating approval or non-approval or rejection within 30 days of receipt of all bona fide written submissions. While the response must be made within said 30 days, the failure to receive the timely response, for whatever reason, shall not constitute approval. Failure by the Developer or the ACC to provide a written response within said 30 days, however, shall be deemed approval. For all non-approvals, the reason(s) therefore shall be stated. For the purposes hereof, "in writing" shall include transmission of authenticated electronic media.

ARTICLE VI

PROPERTY OWNERS ASSOCIATION

Section 6.1 Membership. Every person or entity who is a record owner of any Lot which is subject to the Maintenance charge and other assessments provided herein, including contract sellers, shall be a "Member" of the Rosewater Property Owners Association (the "Association"). The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Owners shall have one membership for each Lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Lots. Regardless of the number of persons who may own a Lot (such as husband and wife, joint tenants, family trusts, corporations, various types of partnerships or limited liability companies), there shall be but one membership for each Lot. There are no restrictions pertaining to persons or legal entities who may take or hold title to a Lot.

The Association shall have two classes of members. Each Owner of a Lot, with the exception of the Developer, shall be a Class A Member and shall be entitled to one (1) vote per Lot owned. The Developer shall be the sole Class B Member and shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A membership on the Control Transfer Date.

Once five lots have been sold, the Developer shall call a meeting of Lot owners for the purpose adopting Articles of Incorporation of the Association and Bylaws of the Association. However, the minimum number of Directors shall be set at five. The affairs of the Association shall be managed by a Board of Directors. The number of Directors in addition to five and the method of election of Directors shall be as set forth in the Bylaws of the Association. The procedures for the election of Directors of the Association and resolution of other issues common to operating an association shall be governed by this Declaration, the Montana Non-Profit Corporation Act, the Articles of incorporation of the Association, and the Bylaws of the Association, as each shall from time to time be in force and effect. Following adoption of the Articles of Incorporation of the Association and Bylaws of the Association, the Developer shall provide $10,000 to the Association.

Section 6.4 Owner's Right of Enjoyment and Required Transfer Fee on Sale of Lot. Every Owner shall have a beneficial interest of use and enjoyment in and to the Common Property (excluding the areas for sewer disposal and placement of storage units reserved for Developer or Developer's successors or assigns), and such right shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) the right of the Association, with respect to the Common Property, to limit the number of guests of Owners;

(b) the right of the Association, subsequent to the Control Transfer Date, to charge reasonable admission and other fees for the use of any facility situated upon the Common Property;

(c) the right of the Association, in accordance with its Articles and Bylaws, (and prior to the Control Transfer Date only with Developer's prior consent) to (i) borrow money for the purpose of improving and maintaining the Common Property and facilities (including borrowing from the Developer or any entity affiliated with the Developer) and to (ii) mortgage the Common Property; however, the rights of the mortgagee of the Common Property shall be subordinate to the rights of the Owners under this Declaration; and should the Developer be an obligor, consent of the Developer is required; and any Developer financing secured against the common areas, required to bring the subdivision to final plat and to complete the infrastructure and amenities, shall remain the sole responsibility of the Developer to satisfy, without contribution from others;

(d) the right of the Association to suspend the Member's voting rights and the Member's and Related Users' (as hereinafter defined) right to use any recreational facilities within the Common Property during any period in which the Maintenance Charge or any assessment against his Lot remains unpaid;

(e) the right of the Association to suspend the Member's voting rights and the Member's and Related Users' right to use any recreational facilities within the Common Property, after notice and hearing by the Board of Directors, for the infraction or violation by such Member or Related Users of this Declaration or the "Rules and Regulations", as hereinafter defined, which suspension shall continue for the duration of such infraction or violation, plus a period not to exceed sixty (60) days following the cessation occurring of such infraction or violation.

(f) the right of the Association to receive from the Owner a Transfer Fee of $1,000 or such other stated sum approved by the Association payable to the Association at the time an Owner sells a Lot; and the Transfer Fee shall be paid by the closing agent or by the Owner should a closing occur without a closing agent; and the Transfer Fees shall be used by the Association for general purposes; provided, however, that the Developer shall not be subject to such Transfer Fee at any time Developer deeds property to a person or entity acquiring ownership of a Lot.

ARTICLE VIII

ROSEWATER WATER SKI CLUB

Section 8.5 Rosewater Water Ski Club Assessments. The Association shall maintain a separate accounting of all costs that are unique to, or solely or primarily for the benefit of, the Rosewater Water Ski Club; and an assessment in the prorated amount of these costs shall be levied on members of the Rosewater Water Ski Club as an additional assessment (the "Rosewater Water Ski Club Assessment ") to the Maintenance Fund as described herein.

In determining whether to allocate costs to the Rosewater Water Ski Club Assessment or to another assessment, the following guidelines shall be used:

Costs of maintaining water quality to human contact recreations standards and costs of maintaining the lakes as aesthetic amenities and for use by the general membership for non-Water Skiing related activities shall be borne and allocated to the general membership of the Association.

Alternatively, costs that are incurred exclusively or primarily to enable or facilitate use of the lakes for Water Skiing Activities, and not merely as aesthetic or swimming ponds, shall be allocated to the Rosewater Water Ski Club.

For example, costs of make-up water to keep the lakes reasonably filled, mowing, landscaping, fish stocking, swimming and bathing, or similar costs which are not unique to the Water Skiing Activities, shall not be included in the Rosewater Water Ski Club Assessment, while, ski course supplies and equipment and any excess premium on liability insurance required to cover Water Skiing Activities shall be included in the Rosewater Water Ski Club Assessment.

ARTICLE IX

DEVELOPER'S RIGHTS AND RESERVATIONS

Section 9.5 Sewer Disposal Facilities. As stated above, the Developer or its assignee or assignees shall own and control the sewer disposal facilities located in Common Areas C, F, G and J and Phase 2 designations at all times, subject to the Developer's right to sell and transfer such ownership to a third party or to the Association. The Developer or its assignee or assignees shall not be obliged to share the income derived from the sewer disposal facilities with the Association.

The Developer or such other owner of said facilities shall bill each Lot Owner using the sewer disposal facilities in accordance with rates established by the Developer or such other owner with the approval of the Montana Public Service Commission. This utility service shall be conducted in a manner so as to be regulated by the Montana Public Service Commission. However, no approved sewer disposal rate shall ever exceed the sewer disposal rate set by the City of Kalispell for its public sewer system by more than 15%.

Section 9.6 Storage Facilities. The Developer or its assignee or assignees shall own the land and control the enclosed, fenced and secured Storage Facilities located in Common Area H at all times for its own business without obligation to pay rent to the Association for placement of or use of the storage units; nor is the Developer or its assignee or assignees obliged to share the income derived from the storage units with the Association. Payment of the Flathead County tax assessment bill associated with Common Area H shall be the sole responsibility of the Developer or of its assignee or assignees. A separate and distinct ingress and egress road connecting the Storage Facility with Rose Crossing is required, and creation and maintenance of said access route shall be the sole responsibility of the Developer or its assignee or assignees. Access to or through the subdivision is forbidden.

ARTICLE X

DUTIES AND POWERS OF THE PROPERTY OWNERS ASSOCIATION

Section 10.3 Duty to Manage and Care for the Common Property. The Association shall manage, operate, care for, maintain and repair all Common Property and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. The duty to operate, manage and maintain the Common Property shall include, but not be limited to the following: establishment, operation and maintenance of a security system, for the Subdivision; management, maintenance, repair and upkeep of the subdivision entrances and other Common Property; maintenance, repair and upkeep of the lakes, drainage structures and related items such as swales, ditches, private lakes, detention structures, levees, berms, outfall structures, weirs and drainage pipes; maintenance, repair, and upkeep of the private roads and road right-of-ways within the Subdivision; and maintenance, repair, and upkeep of the entry Gates and related facilities.

The Rosewater Water Ski Club, however, shall manage, operate, care for, maintain and repair the ski courses and marker buoys and related improvements for water skiers.

The lake berming plan, lake construction, and long-term maintenance and operation of the lake liner system shall be in full compliance with the Approved Conditions of the Flathead County Board of Adjustment and the Conditions of the Flathead Board of Commissioners.

Systems for water, wastewater treatment and stormwater drainage shall comply with the Conditions of the Flathead County Board of Commissioners. The installation and monitoring of monitoring wells shall be performed under and comply with the Conditions of the Flathead County Board of Commissioners.

ARTICLE XI

GENERAL PROVISIONS

Section 11.3 Amendments by the Developer. At any time prior to the Control Transfer Date, Developer may amend this Declaration in any manner it desires, with the exception of

configuring Lots, lakes and water ski attributes, and government-approved conditions to obtain final plat, by an instrument in writing filed and recorded with the Clerk and Recorder of Flathead County, Montana, without the approval of any other Member or Owner or any mortgagee; provided, however, that (i) if a proposed amendment materially alters or changes any Owner's right to the use and enjoyment of the Owner's Lot or of the Common Property as set forth in this Declaration or if the proposed amendment adversely affects title to any Lot, then the proposed amendment shall be valid only upon the written consent thereto by a majority in number of the then-existing Members affected thereby, or (ii) if the proposed amendment would materially and adversely affect the lien status, security and interest of any mortgagee, then the proposed amendment shall be valid only upon the written consent thereto of all mortgagees so affected.

Any amendment made pursuant to this Section shall be certified by Developer as having been duly approved by the Developer and the Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself.

Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section and further agrees that, if requested to do so by Developer, the Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision of this Declaration or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration, or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

The phrase "materially alters or changes any Owner's right to the use and enjoyment of the Owner's Lot or of the Common Property" means that a proposed change to this Declaration would affect the fair market value of the property and/or the right to use the property and all that makes that property desirable or habitable, such as light, air, access, and possession and/or the unexpected directive to assume debt secured by a lien placed on common areas.

The Developer will first seek input from the Lot Owners for any proposed amendment to learn of any concern to be lodged by a Lot Owner before proceeding to adopt an amendment. Nonetheless, during the time the Developer controls the vote on an amendment, i.e., prior to the Control Transfer Date, should a Lot Owner be outvoted on an amendment, the Lot Owner's sole remedy is to sell the Lot because of unwillingness to abide by the amendment.

Developer's debt financing permits sale of Lots free and clear of liens; and it contemplates common areas to be released of liens with principal reductions of the debt-load as sales

progress, with the value of the Lots being greater than the amount of debt financing required to develop the subdivision.

* *

Except as amended by this Amendment, the existing Declaration of Covenants, Conditions and Restrictions Easements, Charges and Liens Rosewater recorded on September 27, 2016, under Doc. No. 201600021128, records of Flathead County, Montana shall remain in full force and effect.

RATIFICATION

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand as of this 3 day of January, 2017.

RIDGELINE CAPITAL, LC

BY _____
William D. Tanner

STATE OF MONTANA)
: ss
County of Flathead)

On this 3 day of January, 2017, before me, the undersigned, a Notary Public for the State aforesaid, personally appeared William D. Tanner, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that such person executed the same in such person's authorized representative capacity on behalf of RIDGELINE CAPITAL, LC, the entity that executed the within instrument, and acknowledged to me that such entity executed the same.

_____

JAMES C BARTLETT
NOTARY PUBLIC for the
State of Montana
Residing at Kalispell, Montana
My Commission Expires
June 12, 2019

JAMES C BARTLETT NOTARIAL SEAL STATE OF MONTANA

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EXHIBIT B

ROSEWATER

Legal Description

The real property is described as follows:

Tract 1:

Tract 1 of Certificate of Survey No. 18421, located and being in the South Half of Section 20, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

Tract 2:

Tract 2 of Certificate of Survey No. 18421, located and being in the South Half of Section 20, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

Tract 3:

Tract 1 of Certificate of Survey No. 17722, located and being in the South Half of Section 20, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.