

After recording return to:

William VanCanagan  
Datsopoulos, MacDonald & Lind, P.C.  
201 W. Main Street, Suite 201  
Missoula, MT 59802  
Phone: (406) 728-0810

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR FOREST HILLS  
RAVALLI COUNTY, MONTANA**

THIS FIRST AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR FOREST HILLS RAVALLI COUNTY, MONTANA (the "**First Amendment**") is made and entered into this 13 day of March, 2020 by the Declarant as set forth below.

**RECITALS**

**WHEREAS**, on or about the 27th day of November, 2018, THE EDINGER FAMILY LIMITED PARTNERSHIP, a Montana limited partnership, as the Declarant made and executed the Declaration of Protective Covenants, Conditions and Restrictions for Forest Hills Ravalli County, Montana (hereinafter the "Declaration") which were recorded on November 29, 2018 as Document No. 726663 in the records of the Ravalli County Clerk and Recorder; and,

**WHEREAS**, all definitions set forth in the Declaration, apart from those exceptions set forth below, shall have the same meaning in this First Amendment; and

**WHEREAS**, pursuant to Section 9.1 of the Declaration, Declarant reserves the sole right to amend and modify this Declaration; and

**WHEREAS**, the Declarant desires to record this First Amendment to the Declaration for purposes of amending the Forest Hills Homeowners Association's rights and obligations regarding the water rights appurtenant to the Property; and

**NOW, THEREFORE**, the Declarant records this First Amendment to the Declaration for the purposes set forth above and as follows:

**FIRST:** There shall be a new section, Section 10, entitled "Water Rights", the Declaration is hereby amended and restated as follows:

a. At the time this First Amendment to the Declaration is recorded, the Declarant will transfer all water rights which are appurtenant to the Property and including, but not limited to, any and all rights and membership interests (including share certificates) in and to the Sweeney Creek Water Users Association, as listed in Exhibit C, (hereinafter "Water Rights") to the Association by a deed or other appropriate instrument of transfer.

b. Water use is authorized by and limited to the water rights held by the Association. The Association will hold and manage the Water Rights listed in Exhibit C for the benefit of all of the Lots in the Property, and will provide the Lots with the amounts of water which they may need from time to time; provided, however, that no Owner will be entitled to increase its use of water, either by expanding an existing use or by beginning a new use, if the increased use would cause the total use of water on the Property to exceed the amount permitted by the Association's Water Rights or the amount actually physically or legally available, or if such increase would limit the amount of water available for distribution to Owners of other Lots. An Owner may not begin a new or increased use of water unless it makes a written request to the Association for approval of the new or increased use, providing detailed information about the nature and amount of the new or increased use, and the Association gives its prior written approval of the new or increased use. The Association may not unreasonably refuse to consent to a new or increased use if the use complies with the requirements of this paragraph.

c. The Association may not provide water for use off the Property without prior written approval of the Board.

d. The Association may not sell, transfer, or otherwise encumber the Water Rights without prior unanimous written approval of the Owners. Any such sale, transfer, or encumbrance may occur only if it in no way negatively impacts or deprives Owners of their proportionate share of water.

e. The Association will be responsible for defending the water rights which are appurtenant to the Property and owned by the Association before the Montana Water Court during the statewide water rights adjudication process, and for defending against any complaints or enforcement actions concerning the water rights which are brought before the Montana Department of Natural Resources and Conservation ("DNRC") or a district court. The costs of defending the water rights will be allocated to all of the Owners as part of the Assessment or Special Assessments for the purpose of paying defense costs.

f. If it is necessary to file any application for change of use of any water right with DNRC with respect to the water which is being used on any Lot, the Owner of that Lot will consult with the Association about the necessity for a change application and the water rights to involve in the change application. If the Association finds that the change is appropriate within the context of the overall

management of the Water Rights for the benefit of all the Lots, the Association will cooperate with the Owner and execute all necessary documents. The Owner will be responsible for all expenses of the change application. If a change application raises or may raise questions about the validity and elements of the Association's water rights, the Association will be responsible for defending the validity and elements of those water rights during the review of the change application, and the costs of defending the water rights will be allocated to all of the Owners as part of the Special Assessments for the purpose of paying defense costs. If the Owner fails to pursue a change application which is determined by DNRC or another entity with jurisdiction to be required by applicable Montana law, the Association can pursue that change application and charge all costs of pursuing the change application, plus a twenty percent administrative fee, to the Owner responsible for the change as a default Special Assessment.

g. "Water System" means the water system owned or operated by the Association and providing fire suppression, process water, and potable water to the Lots and the Property, and all wells, pipes, pumps, mains, valves, meters, and systems to operate the water system, but excluding any water systems or parts thereof owned by the Declarant or any other Owner or any affiliate or assign of the Declarant or any other Owner, and neither owned nor operated by the Association. The Water System includes all water lines located on the Property up to and including each shut-off valve on a feeder line which serves only one Lot or adjoining parcel of land, and any water meters located on a Lot or adjoining parcel of land. If the water line which serves a Lot does not contain a shut-off valve, the Water System will not include the entire water line which serves only that Lot (i) from the point where that line branches off the main line, or (ii) if that line branches off the main line outside of the Lot, from the boundary of the Lot. The Water System does not include any water lines or fixtures which serve only one Lot or adjoining parcel of land, and are located beyond a shut-off valve, other than water meters.

h. The Association shall have responsibility for operating and maintaining the Water System for the Property. The net costs of operating, maintaining, and improving the Water System, including the maintenance of reasonable replacement and emergency reserves, after crediting any amounts received by the Association for providing water service to third parties, will be allocated to all of the Lots as part of the Assessment or Special Assessments. Whenever possible the non-capital costs of operating the water system, after crediting any amounts received by the Association for providing water to third parties, will be allocated to the Lots based on actual use of water as a Use Assessment. However, the cost of capital improvements to the Water System will be allocated to all Lots as part of a Special Assessment.

i. Each Owner shall have responsibility to construct, operate and maintain all water mains which provide service to the Owner's Lot, beginning at the shut-off valve, in conformance with all applicable codes and Applicable Laws,



including laws and standards pertaining to backflow prevention. If the water line which serves a Lot does not contain a shutoff valve, the Owner's responsibility shall begin either (i) at the point where that line branches off the main line, or (ii) if that line branches off the main line outside of the Lot, from the boundary of the Lot. Each Owner may be required by the Association to purchase and install a water meter or meters at the Owner's expense. The meter shall be the property of, and shall be serviced and maintained by, the Association or its assigns.

j. No Owner may install a private well on a Lot without the prior written approval of the Board.

**SECOND:** With the sole exception of the amendment set forth above and in all other respects, the Declaration of Protective Covenants, Conditions and Restriction for Forest Hills Ravalli County, Montana and this First Amendment are hereby confirmed and ratified.

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**Exhibit C  
Water Rights**

1. 76H 21967-00;
2. 76H 21968-00;
3. 76H 21969-00;
4. 76H 21970-00; and,
5. All shares in and to the Sweeney Creek Water Users Association.

