

Return To  
Real Estate Services of MT  
109 N. 4th St. Ste. 202  
Hamilton MT 59840

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

This Declaration of Covenants, Conditions, Restrictions and Easements for Forest Hills (this "**Declaration**") is made this 27<sup>th</sup> day of Nov, 2018 (the "**Effective Date**"), by the Edinger Family Limited Partnership, a Montana limited partnership ("**Declarant**").

**RECITALS:**

**WHEREAS**, Declarant owns certain real property in Ravalli County, Montana, more particularly described on sheet 2 of Exhibit "A" attached hereto and by this reference incorporated herein (the "**Property**"); and

**WHEREAS**, Declarant desires to impose protective covenants, conditions, restrictions, and easements upon the Property for the benefit of itself, as present owner, and for all future owners of the Property or any part thereof; and

**WHEREAS**, Declarant has formed or intends to form the Forest Hills Homeowners Association, a non-profit mutual benefit corporation (the "**Association**"), to own, operate and maintain the Common Elements, to administer and enforce this Declaration, and to collect and use Assessments for the same; and

**WHEREAS**, Declarant intends to form an Architectural Review Committee (hereinafter referred to as the "**ARC**") to review Applications for Proposed Improvements to the Property;

**NOW THEREFORE**, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following protective covenants, conditions, restrictions, and easements, all of which are for the purpose of providing a uniform plan of enhancing and protecting the value, desirability and attractiveness of the Property as a highly desirable residential development with incidental equestrian uses. This Declaration shall run with the Property and shall be binding on all parties having or acquiring any right title or interest, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof.

**ARTICLE 1  
DESCRIPTION OF PROJECT**

The Forest Hills may include up to 27 Lots with 17 Lots consisting of approximately 5 acres and 10 Lots consisting of approximately 10 acres. The Declarant intends to allow for the construction of single-family dwellings on each Lot as described in Section 2.1.A entitled "Permitted Improvements" below. It is anticipated that the subdivision will include certain irrigation rights available to each Lot as described in Article 5 below; trails throughout the subdivision as depicted upon the Site Plan attached for purposes of pedestrian and equestrian recreational use with specific equestrian guidelines to be adopted pursuant to this Declaration; and design guidelines for the Permitted Improvements to be implemented by the Declarant and, as appropriate, the Architectural Review Committee described in Section 2.2 below. Utilities associated with the subdivision will be constructed underground. All access roads within the subdivision will be paved.

**ARTICLE 2**  
**BUILDING RESTRICIONS AND**  
**ARCHITECTURAL REVIEW COMMITTEE**

**2.1. Building Restrictions.**

**A. Permitted Improvements.** No improvements to the Property are allowed except Permitted Improvements. “**Permitted Improvements**” include single-family residential dwellings (each, a “**Home**”), guest houses, stables, fencing and other improvements expressly permitted by this Declaration, all of which shall be subject to review and approval of the ARC as provided herein. Where applicable, all regulations and requirements applicable to Homes herein shall apply with equal force to all other Permitted Improvements, unless stricter requirements are specified.

**B. Lots; No Further Subdivisions; One Home Per Lot.** The Property is currently subdivided into 37 lots of approximately five acres each in Blocks 1, 2 and 3 of the Mountain Park Orchards Subdivision in Ravalli County, Montana, as shown in the Certificate of Survey – Retracement Survey prepared by Smith Engineering and Land Surveys, Inc., Job No. 2017-M102, consisting of two pages, dated November 19, 2018, a copy of which is attached hereto as Exhibit A. For purposes of this Declaration, a “**Lot**” means each of the 27 lots designated on Exhibit B attached hereto and by this reference incorporated herein. As set forth on Exhibit B, each Lot consists of either one five-acre subdivision lot or two contiguous five-acre subdivision lots. Further subdivisions of the Property or any Lot are prohibited. Each Lot shall be improved with not more than one Home and other Permitted Improvements, all subject to review and approval by the ARC as hereinafter provided. For purposes of this Declaration, the owner of a Lot is referred to as an “**Owner**”.

**C. Size.** In no event shall any Home contain less than 1,600 square feet of living area, nor shall any guest house contain more than 1,600 square feet of living area, unless the ARC, in its sole discretion, determines that such Home’s monetary and aesthetic value conform with existing and planned improvements to the Property. “Living area” includes interior floor area of the Home and excludes garages, porches, decks and basements.

**D. Height.** It is the intent of the Declarant that the Property be developed so as to reasonably maximize light, air and views and to minimize the visual impact of improvements. Accordingly, Homes shall be designed to conform to existing grades and landscapes with foundations set into the ground on the downhill side at ground-level and on the uphill side beneath ground level. The maximum height of a Home, as measured from lowest point of grade to highest point of the roof, shall not exceed the greater of two stories or 40 feet.

**E. Materials.** All Homes and other improvements shall be erected on-site. No modular or mobile homes are allowed. All structures shall be comprised of new materials and shall utilize a concrete foundation. Exterior siding shall conform and contribute to the overall quality and aesthetic of the Property. Suggested materials include

stucco, stone, wood composite, wood, log, and other materials of similar quality. Colors shall blend into surrounding landscape; contrasting colors are not permitted.

**F. Setbacks.** No Permitted Improvements except fencing shall be constructed within 25 feet of any Lot boundary line.

**G. Utility Lines.** All utility lines, telephone service, all pipes for water, gas, sewer, drainage, or other purposes, shall be installed and maintained below ground. Satellite dishes are acceptable for internet and television.

**H. Fencing.** Fences shall be well constructed, neat in appearance, and meet all requirements of law. All fencing shall be approved by the ARC for height, appearance and location. All privacy fencing around the Home shall be consistent with the design of the Home. It is the intent of this provision to assure aesthetically pleasing fences in harmony with the surrounding environment. No fences shall be constructed within designated wildlife corridors, trails or conservation easements.

**I. Security Lighting.** No outside lighting, including but not limited to spotlights, area lights, sodium lights, pole-mounted lighting or flood lighting, shall be permitted to exceed 12 feet in height. All outdoor security lighting shall be positioned to avoid intrusion on neighbors and hooded to avoid unnecessary horizontal glare.

**J. Landscaping.** Landscaping shall be limited to landscape plans approved by the ARC. No trees on property may be removed, trimmed, modified or planted without the written consent of the ARC.

**K. Grade of Yard.** All Homes shall be situated and have a finished yard grade so as to have positive drainage away from the building.

**L. Driveways.** All driveways, weather permitting, must be gravel top or paved within 30 days of the date the Home is complete. No Lot shall be permitted to have more than two driveways. Each driveway must have a culvert at least 12 inches in diameter over irrigation and drainage channels. The location and design of all driveways are subject to ARC approval.

**M. Fuel Tanks.** Propane and other similar containers that are customarily used for domestic purposes will be permitted provided they are buried underground. No other tanks or other containers for the storage or dispensing of petroleum-based fuels or gases or other hazardous materials shall be permitted on any Lot without the approval of the Board and the ARC, which approval may be withheld for any reason.

**N. Sewage Disposal Systems.** Each Home will be on individual sewage disposal systems. If not provided by Declarant, Owners will be responsible for the design of their individual systems with due regard for specific soil conditions, percolation rates and the like. All systems shall meet all county and state requirements and comply with applicable law. In addition, all sewage disposal systems not provided by Declarant shall: (i) be subject to prior approval by the ARC; (ii) blend into the natural landscape and not be located or constructed above grade except where approved by the ARC; and (d) not be

located, designed or operated so as to encroach upon or otherwise affect any domestic water distribution systems, wells, ditches or other water rights, irrigation channels, natural drainage courses, the Common Elements or other Lots.

**O. Mailboxes.** Each Owner shall install a mailbox approved by the ARC.

## **2.2. Architectural Review Committee.**

**A. Formation and Composition.** There is hereby formed and designated an Architectural Review Committee (the “ARC”). For so long as Declarant owns any interest in the Property, the Declarant shall be the sole member of the ARC. At such time as the Declarant no longer owns any interest in the Property, the ARC shall consist of three members. The initial members shall be appointed by Declarant. Thereafter, such members shall be appointed by the Board of Directors of the Association. Such persons should be interested, knowledgeable and experienced in design, building and architecture. Preference for membership will be given to Owners. However, if there are not a sufficient number of Owners who are qualified and interested to serve as members, then the Board may elect design professionals (such as architects) who are not Owners to serve on the ARC, and Assessments may be used to reasonably compensate such design professionals for serving on the ARC. Owners shall not be compensated for serving on the ARC.

**B. Approval Requirement.** Any and all site work, grading, excavation, construction, installation, alteration, or demolition of any kind on the Property or any Lot (a “**Proposed Improvement**”) requires prior written approval of the ARC. No Proposed Improvement shall be commenced until the ARC has approved the same in accordance with the procedures set forth herein. Upon approval of the ARC, such Proposed Improvement shall be deemed to be a Permitted Improvement for purposes of this Declaration.

**C. Application for Approval.** Not less than 30 days prior to commencing a Proposed Improvement, the Owner shall submit detailed plans and specifications therefor to the ARC. Plans for Homes and other structures shall include plans for foundations, utilities, grading and site work, a site plan, floor plans, elevations, a roof plan, a landscape plan, a fencing plan, specifications for building materials, windows, siding and other exterior features, and other plans and information as the ARC may reasonably require (collectively, the “**Application**”). Upon review of an Application, the ARC may require the Owner to submit such additional information as the ARC may determine is reasonably necessary to properly review the Application. The ARC may prepare and require use of specific forms to facilitate Application review.

**D. Application Fee.** The ARC may establish and adjust from time to time (but not more often than annually) a design review application fee. Such application fees are intended to reimburse the Association for the out-of-pocket costs related to proper functioning of the ARC. Such application fees shall be paid to the Association and used for the general benefit of all Owners in the manner of Assessments.

**E. Standards for Approval.** No Proposed Improvements shall be permitted unless the ARC determines that such Proposed Improvements will:

- i. conform with the requirements and restrictions in this Declaration;
- ii. conform with any requirements, restrictions and procedures adopted by the Board or the ARC applicable to the Proposed Improvements;
- iii. not unreasonably interfere with the use and enjoyment by any other Owner of his or her Lot; and
- iv. further the common plan and scheme of development contemplated by this Declaration.

It is not the purpose of the ARC to dictate a specific design for a Home or other Permitted Improvements or to deprive any Owner the ability to implement unique design, but rather to ensure that all Proposed Improvements are of a first-rate quality, consistent with this Declaration and the common plan for development of the Property, and sensitive to rights of other Owners to use and enjoy their own Lots as contemplated herein.

**F. Action by the ARC.** The ARC shall review and issue a written decision on the Application within 30 days of submission. The ARC may approve, deny or request additional information with respect to the Application. If additional information is requested and submitted, the ARC shall review and issue a written decision on the same within 15 days following submission. Where the ARC approves an Application, the ARC may impose such reasonable conditions as it deems necessary or prudent to ensure compliance with the standards and requirements set forth in this Declaration.

**G. Exceptions.** Upon specific written request by the Owner, the ARC is authorized to grant exceptions to the building restrictions contained in Section 2.1 for good cause shown, and provided such exception would be consistent with the standards for approval set forth herein. Such exception shall be granted or denied in writing, and, if granted, may be subject to such conditions as the ARC may deem necessary or prudent.

**H. Proceeding With Work.** Upon receipt of approval from the ARC, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently and proceed with work, but in no event shall work commence later than six months following of such approval unless the ARC grants a written extension for good cause shown. The requirement to commence work shall be deemed to have been satisfied if the Owner has commenced construction of foundations of a Home or other enclosure, or, where the Permitted Improvement is not a new Home or other enclosure, if the Owner has substantially commenced work as reasonably determined by the ARC. Upon commencement of work, the Owner shall diligently pursue such work to completion within one (1) year unless a reasonable extension is approved in writing by the ARC. If the Owner fails to commence work as and when required hereunder, then the ARC's approval shall be deemed revoked and the Owner shall be required to seek the ARC's approval of the Application in accordance with the procedures provided for herein.

I. **Waiver and Release of Claims.** The ARC does not review Applications for design defects, code compliance, best practice, structural integrity, functionality, or life safety. No ARC member shall be held responsible for any loss or damage, or be liable in any other way for errors or defects, either latent or patent, in the plans or specifications submitted for approval, or in any building or structure erected in accordance with such plans and specifications, and each Owner hereby waives and releases the ARC and its members from any and all claims, costs, damages and other remedies related to the same.

### **ARTICLE 3** **USE RESTRICTIONS**

**3.1. Residential purposes.** Except as otherwise expressly provided in this Declaration, the Property shall be used solely for Homes and other Permitted Improvements. No business, trade or manufacture shall be conducted on the Property, except home offices conducted entirely within the interior of the Home which do not result in noise or disturbance, and which do not in any way negatively impact, change or conflict with the residential nature of the Property.

**3.2. Leasing.** Leases of any Lot must be for the entire Lot and shall be for a term of not less than 30 days. Weekly and nightly rentals are expressly prohibited.

**3.3. Animals.** Owners of 5-acre Lots shall be entitled to keep no more than five (5) animals in the aggregate, and Owners of 10-acres Lots shall be entitled to keep no more than ten (10) animals in the aggregate. Unless otherwise approved by the ARC, pigs, llamas, goats, sheep and roosters are prohibited. Owners may use designated trails in the Common Elements for equestrian uses, subject, however, to all other provisions of this Declaration, any rules promulgated by the Association with respect to equestrian uses, applicable wildlife management plans, and applicable law. Except as otherwise provided herein, all animals shall be kept within the Lot and shall not be permitted to roam or stray into the Common Elements or onto any other Lot. All animals shall be under the immediate control of their owner. Such animals shall not be permitted to become a nuisance or annoyance to the neighborhood nor to wildlife. All animals except horses and permitted stock as approved by the ARC must be kept indoors except when accompanied by their owner, and in any event, pets must be kept indoors (whether in a Home, stable or other enclosure approved by the ARC) between dusk and dawn. Animal waste shall be removed and disposed of periodically so as not to become obnoxious, offensive, or a nuisance. Owners of animals shall treat and care for such animals humanely so that other Owners shall not suffer or tolerate the inhumane treatment of animals.

**3.4. Advertising Signs.** No signs, billboards or unsightly objects shall be erected, placed or permitted to remain on any part of the Property, except real estate sales promotion signs and monuments relating to the identification and naming of the Property, and mailboxes, name plates, and house numbers to identify the address and occupants of Homes.

**3.5. Vehicles.** There shall be no assembling, repairing or disassembling of vehicles on the Property unless conducted entirely indoors. No mobile homes, trailers, trucks exceeding one-ton capacity, pickups carrying campers, campers, boats, boat trailers, or unsightly vehicles shall be parked or allowed unless stored indoors. The operation of recreational vehicles on the Property, such as motorcycles (other than on roadways), snowmobiles, all-terrain vehicles, go-

carts, and dune buggies, is prohibited. The use or piloting of drones over the Property is prohibited.

**3.6. Heavy Equipment and Machinery.** No heavy equipment or machinery shall be kept, placed or operated upon the Property except such machinery as is used in the construction, repair or maintenance of Permitted Improvements.

**3.7. Hazardous Activities.** No activities shall be conducted on the Property or within the improvements constructed thereon which are or might be unsafe or hazardous to humans, animals, or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property except where justified in self-defense or the defense of others. No hunting is permitted on the Property.

**3.8. Noxious Activities.** No noxious or offensive activities shall be conducted upon the Property, nor shall anything be done or placed on the Property which is or may become a nuisance or cause unreasonable embarrassment, disturbance, or annoyance to others. Mining, quarrying, oil drilling or excavation of any kind shall be prohibited on the Property except for such excavation as may be necessary in connection with the construction or placement of Permitted Improvements approved by the ARC. Drilling of individual water wells shall be permitted subject to the provisions of this Declaration, ARC approval and applicable law.

**3.9. Equestrian Use of Trails.** Trails constructed on the Property for the use and benefit of the owners shall be for pedestrian and equestrian uses only. No motor vehicles or bicycles shall be permitted on such trails. Dogs must be on leash at all times.

**3.10. Weed and Pest Control.** The Owners shall be responsible for controlling any noxious weeds on their Property. In the event an Owner fails to control noxious weeds, the Association shall have the right to undertake weed and pest control on all areas of the affected Lot at the expense of the Lot Owner.

**3.11. Garbage.** No Lot shall be used or maintained as a dumping ground, nor shall any rubbish, trash, garbage or other waste be allowed to accumulate except in sanitary containers which shall be emptied on at least a weekly basis by the Owner or a local garbage collection firm. On garbage collection days, garbage cans shall be placed in a location convenient for collection. All garbage shall be stored in containers having sufficiently tight-fitting covers to prevent the escape of noxious odors and to prevent entrance by animals. Garbage service shall be arranged so that pickup occurs at each Lot.

**3.12. Fires and Fireworks.** Open fires and campfires are not permitted in any part of the Property, except that outdoor cooking grills and fireplaces may be used on patios constructed of noncombustible materials and otherwise appropriately designed for fire safety and approved by the ARC. The Association may adopt further rules and regulations pertaining to outdoor fires. The use of fireworks is strictly prohibited on any part of the Property. Without limiting any other Owner obligation or responsibility in this Declaration, any Owner who, by act or omission, causes or permits a fire to cause injury to persons or damage to property shall be liable for all costs, claims and damages arising therefrom.

**3.13. Designated Easement Areas.** No improvements of any kind shall be constructed, installed or placed within Designated Easement Areas (defined below), nor shall any Owner cause or permit any damage, obstruction or alteration of any Common Elements, without prior written approval of the Board in each instance. An Owner causing or permitting damage, obstruction or alteration of any Designated Easement Area or Common Element without such approval shall, at its own cost, immediately cause the affected Designated Easement Area and/or Common Element to be restored to the same condition that existed or better condition than existed immediately prior to such damage, destruction or alteration.

#### **ARTICLE 4**

#### **COMMON ELEMENTS & EASEMENTS**

**4.1. Use of Common Elements.** Subject to the provisions of this Declaration and the rules and regulations that may be adopted by the Board from time to time, each Owner shall have the non-exclusive right to use the Common Elements in common with the other Owners, as may be required for the purposes of use, occupancy and enjoyment of, such Owner's Lot, and such other incidental uses as are permitted by this Declaration.

**4.2. Definition of Common Elements.** The "Common Elements" include: (i) all roadways on the Property serving more than one Lot; (ii) all utility, irrigation and drainage facilities on the Property serving more than one Lot, including, without limitation, the electricity and irrigation improvements now existing and/or to be constructed on the Property as depicted on the Proposed Electric Layout plan and the Proposed Irrigation Layout plan, each consisting of one page, prepared by Real Estate Services of Montana, LLC, and attached hereto as Exhibit B; (iii) the equestrian/pedestrian trail system on the Property, if any, intended for the common use and benefit of all Owners.

**4.3. Easement for Maintenance and Enforcement.** A blanket non-exclusive easement over the Property is hereby granted in favor of Declarant and the Association for the purpose of exercising their respective rights and performing their respective duties under this Declaration. The authorized representatives of Declarant and the Association or the Board shall be entitled to reasonable access to, over and through the Common Elements upon reasonable advance written notice to the affected Lot Owner, individual Lots as may be required in connection with the operation, maintenance, repairs, or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Lots or the Common Elements.

**4.4. Specific Easement to Roadways and Utilities.** Without limiting the foregoing easements, a non-exclusive easement is hereby granted in favor of the Declarant, the Association and providers of utility services in, upon, under, over and across the easement areas depicted in the Proposed Easement Layout plan, prepared by Real Estate Services of Montana, LLC and attached hereto as Exhibit C, which depicts the location of 60-foot wide easement areas, for purposes of using, maintaining, repairing and replacing roadways, irrigation facilities and utility facilities serving the Property (the "Designated Easement Areas").

#### **ARTICLE 5**

#### **IRRIGATION, DRAINAGE AND EROSION CONTROL**



**5.1. Irrigation and Disclaimer of Availability of Water.** Each Owner shall be entitled to a single connection to irrigation facilities constituting Common Elements, with the tap-on connection to be provided by the Declarant for each Lot at the location identified on the Proposed Irrigation Layout plan attached hereto as Exhibit B. No other connections to or use of common irrigation facilities shall be permitted without the prior written approval of the Board in each instance. The Board may promulgate rules and regulations regarding irrigation and the Owners' use of all irrigation facilities. Each five (5) acre parcel will be allotted a determined amount of water as governed by the ARC. Irrigation by flooding is prohibited. The Declarant and the Association, as the case may be, shall have the right to maintain uniformity of water use among the Lot Owners and in that regard shall have the right to increase or decrease water usage throughout the Property. The Declarant makes no representations or warranties to Lot Owners regarding the availability of water for irrigation for any particular year. Each Owner, in purchasing one or more Lots acknowledges that the allocation of water to the Subdivision is determined by the Water Commissioner of the Sweeney Creek Water Users' Association and will vary from year to year based upon precipitation, snow accumulation at higher elevations, volume and the priority of water rights of other water users. It is anticipated that the Homeowners' Association Board of Directors will work cooperatively with the Water Commissioner to implement a water distribution plan annually. However, there are no guarantees of any specific quantity of water available for use by any Lot Owner during any particular year. The Declarant expressly disclaims any representation pertaining to the availability of water not otherwise made hereunder.

**5.2. Drainage and Erosion Control.** No Owner shall cause or permit the interference with or impairment of natural drainage on the Property, and shall be responsible for restoring the Property to its natural drainage condition upon such interference or impairment caused or permitted by such Owner. The Association retains the right over and across all Lots, to engage in any drainage, soil or erosion control activities.

## **ARTICLE 6**

### **WILDLIFE MANAGEMENT**

**6.1. Living with Wildlife.** Owners accept the responsibility of living with wildlife and shall be responsible for protecting vegetation from damage, confining their pets and other permitted animals, and properly storing garbage, pet food, feed and other potential attractants. Owners shall make themselves and their guests, invitees and licensees aware of potential problems associated with the occasional presence of wildlife such as deer, bears, mountain lions, wolves, skunks and raccoons. Contact the local Montana Fish, Wildlife & Parks office in for brochures that can help homeowners live with wildlife. Also, see the Education portion of the FWP's website at [www.fvvp.mt.gov](http://www.fvvp.mt.gov).

**6.2. Guidelines Related to Wildlife.** The following guidelines are designed to help minimize problems that Owners could encounter with wildlife, as well as helping Owners protect themselves, their property and wildlife that Montanans value. These guidelines are general in nature and shall not be construed, expressly or by implication, to permit an improvement or activity that is otherwise prohibited by this Declaration.

**A.** There is the potential for vegetation damage by wildlife particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees. Owners should be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, and repellants) in order to avoid problems. Owners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.

**B.** Gardens and fruit trees can attract wildlife. Owners should keep produce and fruit picked and off the ground because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be eight feet or taller. Netting over gardens can help deter birds from eating berries.

**C.** Owners shall not feed wildlife or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCAA 87-3-1130) to provide supplemental feed attractants if it results in "concentration of game animals that may potentially contribute to the transmission of disease or that constitute a threat to public safety." In addition, Owners should be aware that deer might occasionally attract mountain lions to the area.

**D.** Birdseed can attract bears. If used, bird feeders should be properly suspended above ground level to deter bears.

**E.** Garbage should be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs and other animals. It is best not to set garbage cans out until the morning of garbage pickup.

**F.** Pets should be confined to the house, in a fenced yard, or in an outdoor kennel area and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be liable (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.

**G.** Pet food and livestock feed should be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such as bears, skunks, raccoons, etc. When feeding pets or livestock such food and feed shall not be left out overnight. Owners should consider feeding pets indoors so that wild animals do not learn to associate food with the Home.

**H.** Boundary fencing that is no higher than four feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) should be utilized in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.

**I.** Compost piles could attract skunks and bears and should be avoided. If used, they should be kept indoors or built to be wildlife-resistant. Compost piles should

be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Food and kitchen scraps should not be composted except indoors in a box with minimum odor.

**J.** Bee hives (apiaries) could attract bears in this area and should be avoided. (If used consult Montana Fish, Wildlife & Parks or the US Fish & Wildlife Service for help planning and constructing an apiary system that will help deter bears).

**ARTICLE 7**  
**THE ASSOCIATION**

**7.1. Formation, Function and Responsibility of Association.** The Association has been, or will be, formed as a non-profit corporation under Montana law having the name (or a name similar thereto) the “Forest Hills Homeowners Association” and shall be the governing body under this Declaration. The Association shall not be deemed to be conducting a for-profit business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of the Owners. All applicable provisions of this Declaration shall be deemed to constitute the Bylaws of the Association.

**A. Responsibilities of Association.** The Association, at its expense, shall be responsible for maintenance, repair, and replacement of the Common Elements. The Association is also responsible for maintaining, repairing and replacing such other improvements and facilities which are specifically designated as the Association’s responsibility elsewhere in this Declaration.

**B. Responsibilities of Owners.** Except for the Common Elements and other improvements which are the Association’s responsibility pursuant to Section 7.1.A, each Owner shall be responsible for, at such Owner’s own expense, all maintenance, repair and replacement of all improvements comprising such Owner’s Lot, Home and other Permitted Improvements.

**C. Nature of Obligation.** Nothing contained in this Declaration shall be construed to impose a contractual liability upon the Association for maintenance, repair and replacement of the Common Elements or other improvements or facilities or any portion or parts thereof, but the Association’s liability shall be limited to damages resulting from gross negligence or willful misconduct. Further, no Owner shall have a claim against the Association for any work ordinarily the responsibility of the Association, but which the Owner has performed or paid for, unless such an arrangement shall have been duly approved in advance by the Association.

**7.2. Association Membership.** Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot, except as may otherwise be required by law. Ownership of a Lot shall be the sole qualification to be a member of the Association. Each Owner, by acceptance of a deed or other conveyance of a Lot, thereby becomes a member, whether or not this declaration of such membership is made a part of, incorporated by reference or expressed in said deed or conveyance. Where a Lot has multiple owners, such owners shall designate in writing a single person to act as the representative Owner on behalf of all such

owners with regard to Association membership (including, without limitation, voting and receiving notices).

**7.3. Reservation of Declarant Rights.**

**A. Declarant Control and Transition Date.** Until the Transition Date as hereafter defined, the Declarant shall have exclusive control of the development and operation of the Property including the construction and maintenance of Lots, Homes, and Permitted Improvements and general and limited common elements, the sale or lease of Lots, Homes, and Permitted Improvements, collection and retention of deposits, fees and assessments, reserves for future maintenance, and working capital.

**B. Transition Date.** The Transition Date shall mean the date no later than the earlier of: (a) ninety (90) days after conveyance of one hundred percent of the Lots to Owners other than the Declarant or (b) the date upon which the Declarant records an Amendment to the Declaration pursuant to which the Declarant voluntarily surrenders right to control the Homeowners' Association. If the Declarant voluntarily surrenders control pursuant to (b) above, the Declarant may require that for the duration of the period of Declarant Control, specified actions of the Board of Directors of the Association be fulfilled, as described in a recorded instrument executed by the Declarant before they become effective. Upon the occurrence of the Transition Date, the individual Lot Owners shall be deemed to have been admitted to the Association and shall be subject to the jurisdiction of the Association and all of the provisions of this Declaration pertaining thereto.

**C. Declarant's Transfer of Control.** Within ninety (90) days after the Transition Date, the Declarant shall deliver to the Association all personal property of the Owners and the Association held or controlled by the Declarant including, but not limited, the following:

- i. The original or a photocopy of the recorded Declaration and each Amendment to the Declaration;
- ii. The financial records associated with the operations of the Property including cancelled checks, bank statements, and financial statements of the Property operations;
- iii. Funds associated with operations including any funds held in reserve by the Declarant for maintenance and repairs;
- iv. All tangible personal property of the Association associated with the Property, represented by the Declarant to be the property of the Association and inventory of the property;
- v. Insurance policies or copies thereof for the Permitted Improvements and the Association;

vi. Any other permits used by governmental bodies applicable to the Permitted Improvements in force or issued within one (1) year before the Transition Date;

vii. All original warranties that are still in effect for the Common Elements, or any other areas or facilities which the Association has a responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owner's manuals or instructions furnished to the Declarant with respect to installed equipment or building systems;

viii. A roster of Lot Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records and the date of closing of the first sale of each Lot sold by the Declarant;

ix. Any employment contracts or service contracts in which the Association is one of the contracting parties, or service in which the Association or the Lot Owners have an obligation or are responsible, directly or indirectly, to pay some or all of the fee or charge of the person performing the services; and,

x. All other contracts to which the Association is a party.

**D. Additional Reserved Rights.** From and after the Recording Date of this Declaration and prior to the Transition Date, the Declarant hereby:

i. Reserves an easement over and upon the common elements and land pertinent to complete construction for the purpose of access for constructing improvements.

ii. Reserves solely to the Declarant the right to grant utility easements reasonably necessary to the ongoing development of the project, without approval of any Lot Owner.

iii. Reserves the right to Amend this Declaration, without the approval of any Lot Owner, to create additional limited common elements, to change the location on the Real Property of one or more buildings, to add a more complete description of Lots and improvements, to record additional plats and plans to supplement or modify those included herein, and to amend the percentage of interest in common elements attached to each lot. In accordance with the provisions of this Declaration, each Lot Owner, and each holder of a mortgage or trust indenture on a Lot, hereby grants unto the Declarant, its successors and assigns, a limited power of attorney to amend this Declaration in accordance with the Declarant's plan of development as may be amended by the Declarant from time to time in its sole discretion. Recordation of Amendments modifying the percentage of interest in common elements attached to each Lot shall be deemed a conveyance, transferring title into common elements in accordance with the amendment.

iv. Reserves the right to use water and power provided to the Property or any Lot for any purposes associated with the development of the Property.

v. Upon transfer of title of the Common Elements to the Homeowners' Association, Declarant may terminate its right to construct improvements and its obligations to pay taxes on the Property at any time by recording a Notice of Termination with the Ravalli County Clerk and Recorder. Such termination shall relieve Declarant of its obligation to pay taxes on land in which improvements could have been built. Such land shall become a general common element on the Property.

vi. Declarant reserves the right to amend this Declaration, as provided herein above, or to comply with any FHA, VA, Freddie Mac, or FNMA requirements for guaranteeing or purchasing loans on the Lots and associated improvements. All Owners and all mortgages of a Lot, by acceptance of a deed, mortgage or trust indenture to any Lot, shall be deemed to consent to any such amendment by Declarant and to grant unto Declarant, in irrevocable power of attorney, to execute, acknowledge and record such amendments. Except as otherwise provided in this Declaration, the provisions of this Declaration shall be amended in the sole discretion of the Declarant until all the units have been sold and thereafter only by affirmative vote of the owners of eighty percent (80%) of the Lots as provided in Section 9.1 below; if a Lot has more than one owner, only one owner of that Lot need consent. No such amendment shall be effective prior to completion of construction of all improvements, unless approved by Declarant in writing. Amendments of a material adverse nature to eligible mortgagees must be approved by eligible mortgagees that represent at least fifty-one percent (51%) of the votes of Lots that are subject to mortgages. Approval shall be assumed when an eligible mortgagee fails to submit a response to any written proposals for an amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail with a "return receipt" requested.

#### **7.4. Board of Directors.**

**A. Selection of the Board and Officers.** Prior to the Transition Date, Sections 7.3 and 7.4 shall govern the election or appointment of Members of the Board. Within thirty (30) days after the Transition Date, the Owners shall elect a new Board. The number of Board Members and their terms of services shall be specified in the Bylaws. The Board shall elect Officers in accordance with the procedures provided in the Bylaws. The Members of the Board and Officers shall take office upon election. Removal of Board Members, and their terms of service shall be as provided in the Bylaws.

**B. Powers of the Board.** Except as provided in this Declaration and the Bylaws, the Board shall at all times act on behalf of the Association. The Board may exercise all powers of the Association, except as otherwise provided in this Declaration or the Bylaws.

**C. Limitations on Board Authority.** The Board shall not act on behalf of the Association to amend the Declaration in any manner that requires the vote or approval of the Lot Owners pursuant to the provisions of these Covenants, to terminate the Covenants, or to elect Members of the Board or determine the qualifications, powers, and duties, or terms of office of Members of the Board. The Board may, in accordance with the Bylaws, fill vacancies in its membership for the unexpired portion of any term.

**D. Right to Notice and Opportunity to be Heard.** Whenever this Declaration requires that an action of the Board be take after "Notice and Opportunity to be Heard," the following procedure shall be observed: The Board shall give written Notice of the proposed action to all Owners or occupants of Lots or associated improvements whose interest would be significantly affected by the proposed action. The Notice shall include a general statement of the proposed action and the date, time and place of the hearing, which shall be not less than five (5) days from the date Notice is delivered by the Board. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the Notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision, but shall not bind the Board. The affected person shall be notified of the decision in the same manner in which Notice of the meeting was given.

**7.5. Meetings of the Owners.** Meetings of the Owners shall be held at such places and times as shall be specified in the Bylaws.

**7.6. General Powers of the Board.** Except as expressly otherwise provided by the Association's articles of incorporation or this Declaration or otherwise required by law, all power and authority to act on behalf of the Association both pursuant to this Declaration and otherwise shall be vested in its Board and its officers under the direction of the Board, and shall not be subject to any requirement of approval on the part of the Owners. The Board shall have the following powers which shall be exercised or authorized by a majority vote of the then-sitting Directors at a meeting of the Board as provided in Section 7.3.B:

**A.** To levy Assessments as set forth in Section 7.11.

**B.** After giving at least 10 days advance written notice to all Owners, to adopt rules and regulations governing the use, maintenance and administration of the Common Elements and the Lots for the health, comfort, safety and general welfare of the Owners and for the protection of property values.

**C.** To enter into contracts on behalf of, and to purchase or secure in the name of, the Association any materials, supplies, insurance, equipment, fixtures, labor, services and advice required by the terms of this Declaration, or which in its reasonable opinion shall be necessary or proper for the operation or protection of the Association and the Property.

**D.** To enter upon, and to have its contractors, subcontractors and agents enter upon, the Common Elements and the exterior of any Lot as may be required to exercise

all of the rights and obligations granted to or imposed upon it pursuant to this Declaration.

**E.** To maintain one or more bank accounts (granting authority as the Board shall desire to one or more Persons to draw upon such accounts), and generally, to have all the powers necessary and incidental to the operation and management of the Association.

**F.** To adjust the amount, collect and use any insurance proceeds to repair damaged or replace lost property; and if proceeds are insufficient to repair damaged or replace lost property, to assess the Owners to cover the deficiency.

**G.** To borrow money on behalf of the Association provided, however, that the Board shall not secure any such borrowings by encumbering any part of the Property or any Lot. The Board shall, however, have the power to secure such borrowings by pledging and granting a security interest in the Assessments due the Association hereunder.

**H.** To acquire and hold real property constituting Common Elements; and to acquire, hold, and dispose of tangible and intangible personal property.

**I.** To approve payment for any of the foregoing.

**J.** To take such other action as may be required to enforce the provisions of this Declaration and the rules and regulations made herein.

**K.** To exercise any and all other powers, rights and authorities of a non-profit corporation under Montana law for the common benefit of the Property and the Owners.

**7.7. Liability of Directors and Officers.** None of Declarant, the Directors or the officers of the Association shall be liable to the Association or the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever, and, to the fullest extent permitted by law, the Association and the Owners shall indemnify, defend and hold harmless Declarant and each of the Directors and officers of the Association from and against, all claims, demands, costs, fees, suits, judgments and other liabilities arising out of acts or omissions of Declarant, the Directors or the officers of the Association acting pursuant to this Declaration, unless such act or omission is found by a court of competent jurisdiction to be ineligible for indemnification under applicable law. No provision of this Declaration shall be construed to limit indemnification to which Declarant, a Director or officer would otherwise be entitled under applicable law, and further, any law, rule or common law principle that provides additional indemnification or protection for Declarant and/or Directors and officers of the Association, but requires adoption by the Association to be given effect, is hereby so adopted by the Association.

**7.8. Compliance and Enforcement.**

**A. By the Association.** The Board may impose remedies and sanctions on Owners for violation of this Declaration after notice and hearing at an Annual or Special Meeting of the Owners in accordance with Section 7.5, or, in case of emergencies,



immediately and without notice. Such remedies and sanctions may include, without limitation:

- i. Imposing reasonable monetary fines.
- ii. Levying of Specific Assessments, as provided in Section 7.11.E.
- iii. Suspending an Owner's right to vote until the violation is corrected.
- iv. Suspending any services provided by the Association to an Owner or Lot if the Owner is more than 30 days delinquent in paying any Assessment or other charge owed to the Association.
- v. Exercising self-help or taking other action to abate any violation of the Declaration or rules or regulations of the Board.
- vi. Requiring an Owner, at such Owner's expense, to remove any personal property, structure or other improvements from the Property (including from inside a Lot), if such property, structure or improvement violates this Declaration, and to restore the Property to its previous condition.
- vii. Recording notices of violation in the public records.
- viii. Foreclosing liens provided for in this Declaration.

All remedies in favor of the Association set forth in this Declaration shall be cumulative of any remedies available at law or in equity. In any action to enforce this Declaration, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs reasonably incurred in such action.

**B. Enforcement by Owners.** Any Owner may seek to remedy another Owner's violation of this Declaration by first giving written notice to the Association. If,

- i. after 30 days following such notice, such violation continues and the Association has not commenced any measure authorized under subsection "A" above to cause the violating Owner to cure such violation, or
- ii. after 90 days following such notice, such violation continues,

then the Owner seeking to remedy such violation may seek any and all remedies available at law or in equity with respect to such violation. Notwithstanding the foregoing, in case of emergency threatening imminent injury to persons or damage to property, the Owner seeking such remedy may immediately and without notice seek any and all remedies available at law or in equity with respect to such violation.

**7.9. Books and Records.** The Board shall maintain the following records of the Association available for inspection, examination and copying during normal business:

**A.** Copies of this Declaration and any amendments, articles of incorporation of the Association, annual reports and any rules and regulations adopted by the Association or its Board, and the Association's books, records and financial statements. Furthermore, the Board shall provide to the Lot Owners annual financial statements.

**B.** Records in chronological order of the receipts and expenditures affecting the Common Elements for the last three years, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expense incurred, and copies of all contracts, leases, or other agreements entered into by the Association.

**C.** The minutes of all meetings of the Association and the Board, which shall be maintained for a period of not less than three years or such longer period as may be required by law.

**D.** Ballots and proxies for all elections to the Board and for any other matters voted on by the Owners, which shall be maintained for a period of not less than one year.

The Association may charge a reasonable administration fee related to such inspection, examination and copying. Upon 10 days' notice to the Board and payment of a reasonable fee, any Owner shall be furnished a statement of such Owner's account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner.

#### **7.10. Insurance.**

**A. The Association.** The Board shall have the authority to, and shall, obtain and maintain at all times insurance for the Property, the Association and the Board as is reasonable and prudent, which insurance shall include, at a minimum: (i) general liability insurance covering the Association and the Board and their agents and employees; and (ii) such other insurance as the Board may deem required, reasonable or prudent including, without limitation, directors' and officers' liability insurance.

**B. Owners.** Each Owner shall defend, indemnify and hold the Declarant and the Homeowners' Association harmless from any and all demands, claims loss or liability (including costs and reasonable attorneys' fees) resulting from the injury to or death of any person or persons who is or are Owners, family members, guests, service providers or invitees of any kind or variety of an Owner occurring on or through the use of Owner's Lot or any portion of the Common Elements.

**C. Release of Claims.** Each Owner hereby waives and releases any and all claims which such Owner may have against Declarant, the Association, the Board, and the ARC, and their respective principals, shareholders, directors, officers, members, employees and agents, as applicable (collectively, "**Released Parties**"), for any damage to the Common Elements, the Lots, the Home, other Permitted Improvements, and/or personal property caused by fire or other casualty to the extent such damage is covered by insurance or would be covered by insurance for which such Owner is responsible hereunder (without regard to whether such Owner actually maintained such insurance).

#### **7.11. Assessments.**

**A. Assessments by the Declarant.** Prior to the Transition Date, the Declarant shall in its discretion have the authority to levy upon the Lot Owners all of the assessments described in subparagraphs B – J set forth below. Following the Transition Date, the assessments described below shall be levied by the Association pursuant to the provisions hereinafter set forth.

**B. In General; Lien for Assessments.** Each Owner, by acceptance of a deed to, or other interest in, a Lot, whether or not it shall be so expressed in any such deed or other conveyance for such Lot, hereby covenants and agrees to pay Assessments and other costs and fees levied pursuant to this Declaration. “**Assessments**” means the Annual Assessments, Special Assessments and Specific Assessments as defined and levied in accordance with this Declaration. Such Assessments, costs and fees, not paid when due, together with interest thereon at the rate of 12% per annum, late fees in the amount of 5% of the total amount past due, and costs of collection (including, without limitation, attorneys’ fees incurred in respect thereto whether or not suit shall be instituted), shall be a charge and a continuing lien upon the Lot against which such levy is made.

**C. Purpose of Assessments.** The Assessments levied by the Association shall be used for the purpose of promoting the health, safety and welfare of the Owners and, in particular, for (i) Common Expenses; (ii) the establishment of such reasonable reserves as the Board deems appropriate; (iii) the performance of the duties of the Board as set forth in this Declaration, including the enforcement of the provisions thereof; and (iv) proper functioning of the ARC; and (iv) in general, carrying out the purposes of the Association as stated herein and in the articles of incorporation of the Association. Assessments shall be assessed equally against each Lot unless otherwise expressly provided herein. “**Common Expenses**” means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the benefit of all Owners and Lot, including, but not limited to, the expenses incurred or anticipated to be incurred in carrying out the rights and responsibilities of the Association and the ARC under this Declaration.

**D. Annual Assessments.** Each year on or before August 1st, the Board shall estimate the total amount necessary to pay the Common Expenses for the ensuing fiscal year (which estimate shall include a reasonable amount considered by the Board to be desirable for reserves) (the “**Annual Assessment**”) and shall notify each Owner in writing as to the amount of such Owner’s 1/27th share thereof. On or before August 15th of the same year, each Owner shall be liable for and obligated to pay such Owner’s share of the total Annual Assessment. Provided, however, that any Owner who purchases two adjacent five (5) acre lots for purposes of combining or merging the two properties shall be subject one assessment equivalent to the same fraction as an Owner of one (1) ten-acre Lot.

**E. Special Assessments.** The Board may at any time or from time to time levy Special Assessments. Special Assessments shall be levied for the purpose of defraying, in whole or in part, the cost incurred by the Association for any repair, replacement, maintenance, service, labor or materials not provided for in the Annual Assessment for the then current calendar year. Special Assessments shall be approved by

the affirmative vote of not less than a majority of the votes cast at the annual or a special meeting of the Owners called and held in accordance with the provisions of Section 7.5.

**F. Specific Assessments.** The Board shall have the power to levy Specific Assessments against a particular Lot as follows (provided that the Owner has received notice of the proposed Specific Assessment and an opportunity to be heard at an Annual or Special Meeting in accordance with Section 7.5): (i) to cover costs incurred in bringing a nonconforming Lot into compliance with this Declaration or any rules or regulations of the Association; and (ii) to cover costs or liabilities incurred as a consequence of the conduct of the Owner.

**G. Nonpayment of Assessments.** Any Assessment which is not paid when due shall be deemed delinquent, with no requirement for notice to the delinquent Owner. If an Assessment is not paid within 10 days after the delinquency date, such Assessment shall be subject to interest and late fees as provided in Section 7.11.A from the delinquency date. If an Owner fails to pay when due any Assessment, charge, fee, cost, or other amount authorized to be charged to the Owner hereunder, such amount shall constitute a default hereunder and a lien on the Lot of such Owner. The Board shall, in the name of and on behalf of the Association, have all rights and remedies to enforce such collection as permitted by law, including bringing an action at law or in equity against such Owner and foreclosing the aforesaid lien. All expenses of the Association in connection with such action or proceedings, whether or not suit shall be instituted, including attorneys' fees and court costs and other fees and expenses shall be charged to and assessed against such Owner (and shall constitute a personal liability of such Owner) and shall be added to and deemed part of that Owner's Assessment.

**H. Subordination of Lien to Mortgage.** The lien for Assessments provided for herein shall be subordinate to the lien of any prior, recorded first mortgage or trust deed on a Lot made to any bank, savings and loan association or other bona fide lender, except for the amount of any Assessments which becomes due and payable from and after the date such lender obtains title to or possession of such Lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such transfer of title or possession shall not relieve any Owner from personal liability for any Assessments.

**I. Failure to Levy or Notify.** Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

**J. No Withholding of Payment as Remedy.** No Owner shall be entitled to withhold, offset or abate Assessments for any reason without prior approval of the Board in cases where money is owed by the Association to one or more Owner(s). In no event shall Assessments be offset or abated on account of interruption to services provided by the Association or third parties.

**K. Commencement of Assessments and Initial Contribution.** The obligation for Assessments with respect to each Lot commences upon the sale or transfer of such Lot by the Declarant to any person not succeeding to the rights of Declarant hereunder. At the closing of such first sale or transfer, the Owner shall pay the Association the amount of \$500.00 (which amount may be escalated from time to time by the Board in keeping with the amount of the Annual Assessment), without proration, which amount shall be used to fund Association start-up costs, capital improvements and other Common Expenses and shall satisfy such Owner's obligation for the Annual Assessment for the calendar year in which such sale or transfer occurs.

**7.12. Disclaimer of Bailee Liability.** Notwithstanding anything to the contrary contained in this Declaration, neither the Association nor Declarant shall be considered a bailee of any personal property stored on the Property or in any Lot and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence.

**ARTICLE 8**  
**GENERAL RELEASE & ASSUMPTION OF RISK**

**8.1. General Release of Claims.** The action or inaction of a Released Party, as defined in Article 7, Section 7.10.C, when performing his, her or their duties or exercising rights under this Declaration in good faith, shall not be a basis for claims, costs, damages or other remedies, and each Owner hereby waives and releases all Released Parties from any and all claims, costs, damages and other remedies related to the same.

**8.2. Assumption of Risk.** The Property, including, without limitation, the Common Elements, contains naturally dangerous conditions. Recreational activities that may be undertaken on the Property, such as hiking, horseback riding and other activities are all inherently dangerous. All Owners, for themselves and for their guests, invitees and licensees, assume all risks associated with the use of any part of the Property. The Released Parties are not responsible for ensuring the safety or security of persons or property on the Property. Without limiting any other release or waiver of liability in this Declaration, all Owners, for themselves and for their guests, invitees and licensees, hereby release and waive all claims, costs, damages and other remedies against the Released Parties, regardless of whether based on acts or omissions of Released Parties, arising out of or in any way connected with the use of the Property. Without limiting the foregoing, the Association may condition the use of Common Elements upon the user thereof signing additional releases, waivers and indemnities.

**ARTICLE 9**  
**GENERAL PROVISIONS**

**9.1. Amendments.** Until Declarant no longer owns any interest in any part of the Property, Declarant reserves the sole right to amend, modify and this Declaration. At such time as Declarant no longer owns any interest in the Property, this Declaration may be amended, modified or supplemented only by an instrument signed by the Owners of eighty percent (80%) of the Lots.

**9.2. Owner Responsibility.** Each Owner shall be responsible for any violation of the terms of this Declaration by his, her or their guests, occupants, tenants, invitees and licensees.

**9.3. Partial Invalidity.** The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

**9.4. Perpetuities and Other Invalidity.** This Declaration is perpetual in nature. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provisions, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such provision shall continue only until 21 years after the death of the survivor of the now living lawful descendants of the then acting President of the United States of America.

**9.5. No Waivers.** No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**9.6. Waiver of Dissolution and Partition.** To the fullest extent permitted by law, each Owner hereby irrevocably releases and waives any right of dissolution of the Association or partition of the Common Elements or any part thereof.

**9.7. Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of an affordable residential town home community.

**9.8. Lot Owners Subject to Declaration, Bylaws, Rules and Regulations, and Restrictive Covenants.** All present and future Owners of Lots shall be subject to, and shall comply with the provisions of this Declaration, the Bylaws, restrictive Covenants, and rules and regulations adopted by the Declarant and hereafter by the Association, as these instruments may be amended from time to time. The execution of a purchase contract by Lot Owner or the acceptance of a deed thereto shall constitute acceptance of the provisions of such instruments by such Owner. All Owners shall be responsible for ensuring compliance by their family members, and other occupants of their Lots and Improvements and their guests. The provisions of this Declaration and the Bylaws, restrictive covenants and rules and regulations adopted by the Declarant and thereafter the Association shall be covenants running with the land and shall bind any person having an interest in such Lot as through the provisions were recited and fully stipulated in each deed or conveyance thereto. The invalidity of any provision of this Declaration shall not affect in any manner the validity or enforceability of the remainder of the Declaration. No provision of this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 27 day of NOVEMBER, 2018.



**EXHIBIT B**

**LOTS**

<b>Declaration Lot</b>	<b>Legal Description</b> (all lots referenced in this column are lots depicted on the Certificate of Survey – Retracement Survey of the Mountain Park Orchards Subdivision, Section 28, T10N, R20W, P.M.M., Ravalli County, Montana)
Lot 1	Lots 1 and 16 in Block 1
Lot 2	Lots 2 and 15 in Block 1
Lot 3	Lots 3 and 14 in Block 1
Lot 4	Lot 13 in Block 1
Lot 5	Lot 4 in Block 1
Lot 6	Lot 12 in Block 1
Lot 7	Lot 5 in Block 1
Lot 8	Lot 11 in Block 1
Lot 9	Lot 6 in Block 1
Lot 10	Lots 7 and 8 in Block 1
Lot 11	Lots 9 and 10 in Block 1
Lot 12	Lots 7 and 8 in Block 2
Lot 13	Lot 6 in Block 2
Lot 14	Lot 5 in Block 2
Lot 15	Lot 4 in Block 2
Lot 16	Lot 3 in Block 2
Lot 17	Lot 2 in Block 2
Lot 18	Lot 1 in Block 2
Lot 19	Lot 12 in Block 2
Lot 20	Lot 11 in Block 2
Lot 21	Lots 9 and 10 in Block 2
Lot 22	Lots 7 and 8 in Block 3
Lot 23	Lot 6 in Block 3
Lot 24	Lot 5 in Block 3
Lot 25	Lots 12 and 13 in Block 3
Lot 26	Lot 11 in Block 3
Lot 27	Lots 9 and 10 in Block 3



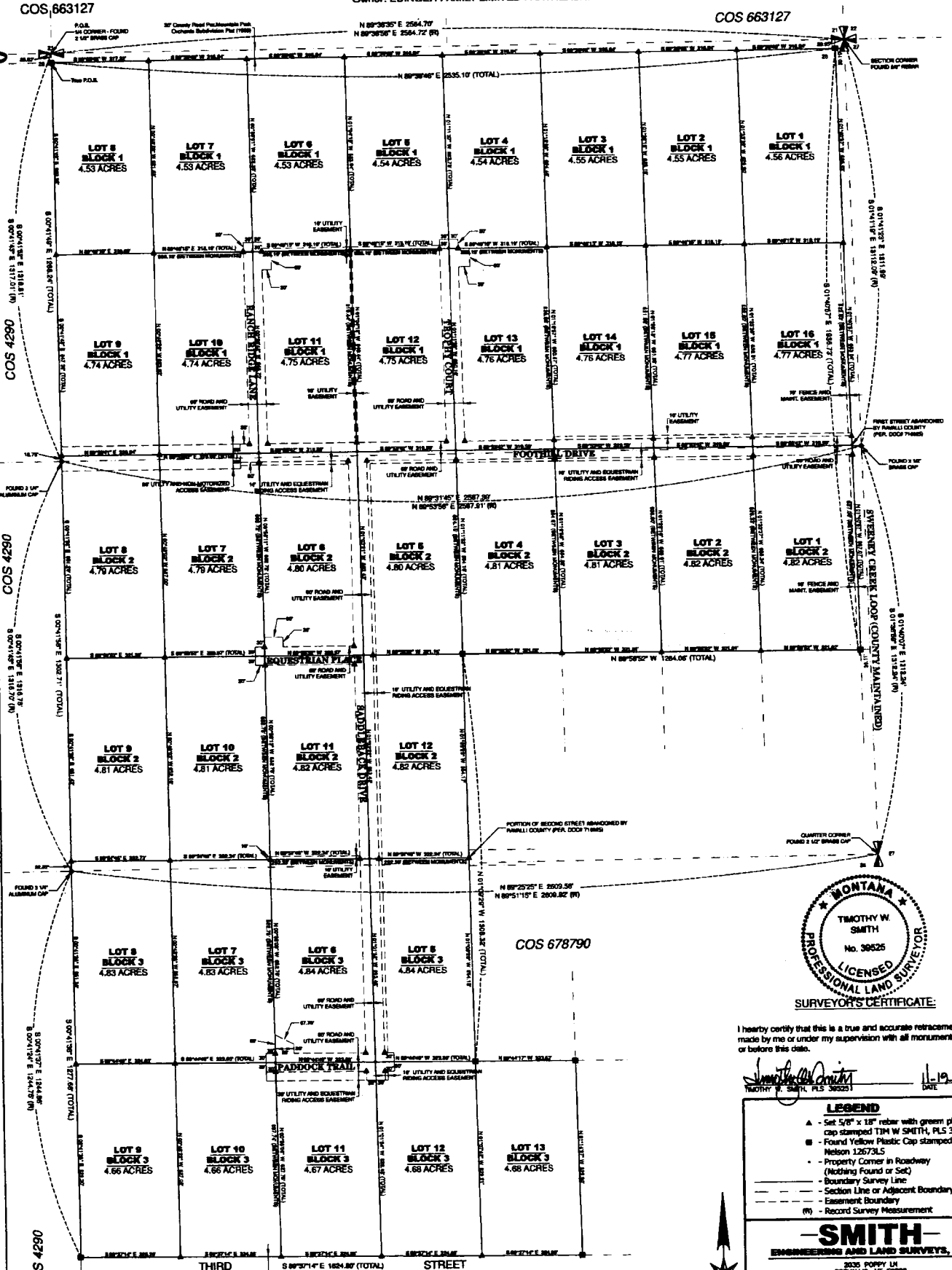
# Exhibit A

## Certificate of Survey RETRACEMENT SURVEY

OF THE TRACTS IN MOUNTAIN PARK ORCHARDS SUBDIVISION RECORDED IN 1909 OWNED BY EDINGER LIMITED FAMILY PARTNERSHIP

IN SECTION 28, T10N, R20W, P.M.M. RAVALLI COUNTY, MONTANA  
Survey Commissioned By: REAL ESTATE SERVICES OF MONTANA, LLC  
Owner: EDINGER FAMILY LIMITED PARTNERSHIP

CS 726662-R Pg 1 of 2



**MONTANA**  
TIMOTHY W. SMITH  
No. 38525  
LICENSED LAND SURVEYOR  
SURVEYOR'S CERTIFICATE:

I hereby certify that this is a true and accurate retracement survey made by me or under my supervision with all monuments set on or before this date.

*Timothy W. Smith* 11-19-2018  
TIMOTHY W. SMITH, PLS 38525 DATE

- LEGEND**
- ▲ - Set 5/8" x 18" rebar with green plastic cap stamped TWS SMITH, PLS 38525
  - - Found Yellow Plastic Cap stamped Nelson 1257LS
  - - Property Corner in Roadway (Nothing Found or Set)
  - - Boundary Survey Line
  - - - Section Line or Adjacent Boundary
  - - - Easement Boundary
  - (R) - Record Survey Measurement

**SMITH**  
ENGINEERING AND LAND SURVEYS, INC.  
2035 POPPY LN  
CORVALLIS, UT 86308  
408-333-9242, timothy@smithsurvey.com

SCALE: 1" = 200' DATE: 11/19/2018  
DRAWN BY: J. SMITH REVISION DATE:  
JOB NO: 2017-1102 SHEET 1 OF 2

726663 - Page: 25 of 26

THIRD STREET (SEE NEED)  
Mountain Park Orchards Subdivision Plat (1909)  
STATE OF MONTANA RAVALLI COUNTY Page: 1 of 2  
DOCUMENT 726662 CERTIFICATE OF SURVEY  
RECORDED: 11/29/2018 9:15:49 AM  
Regina Piettenberg, CLERK and RECORDER  
Fee: \$44.50 by *CS 726662-R* Deputy

COS 5600 200 0 200 400  
GRAPHIC SCALE  
Basis of Bearing - Geodetic North by GPS Determination

**Certificate of Survey  
RETRACEMENT SURVEY**

OF THE TRACTS IN MOUNTAIN PARK ORCHARDS SUBDIVISION RECORDED IN 1909 OWNED BY EDINGER LIMITED FAMILY PARTNERSHIP  
IN SECTION 28, T10N, R20W, P.M.M., RAVALLI COUNTY, MONTANA  
Survey Commissioned By: REAL ESTATE SERVICES OF MONTANA, LLC  
Owner: EDINGER FAMILY LIMITED PARTNERSHIP

CS 726662-R pg 2 of 2

LEGAL DESCRIPTION OF THE EDINGER FAMILY LIMITED PARTNERSHIP PROPERTY:

A Tract of Land in the E1/2 of Section 28, T10N, R20W, P.M.M. more particularly described as Lots 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15 & 16 from Block 1, Lots 1,2,3,4,5,6,7,8,9,10,11 & 12 from Block 2 and Lots 5,6,7,8,9,10,11,12 & 13 from Block 3 of the Mountain Park Orchards Subdivision, a subdivision platted in Ravalli County, Montana in 1909, also described as follows: Commencing at the quarter-corner common to Sections 21 and 28, thence S00°41'52"E along the north-south mid-section line a distance of 29.82' to the true point of beginning, thence S00°41'46"E a distance of 1,268.24'; thence S00°41'58"E a distance of 1,302.71'; thence S00°41'36"E a distance of 1,277.68'; thence S89°37'14"E a distance of 1,624.80'; thence N01°14'27"W a distance of 629.90'; thence N89°44'17"W a distance of 323.62'; thence N01°09'29"W a distance of 1,308.32'; thence S89°56'52"E a distance of 1,284.06'; thence N01°40'57"W a distance of 1,836.73'; thence S89°38'46"W a distance of 2,535.10' to the true point of beginning, containing 174.95 acres, more or less.  
SUBJECT TO AND TOGETHER WITH any restrictions, reservations or easements shown, of record or as apparent upon the ground.

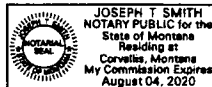
OWNERS CERTIFICATE:

I, the undersigned owner of the tracts shown hereon do hereby certify that I have caused to be surveyed the original selected common boundary lines and create the easements shown and adopt this plat.

*Edward Adkins*  
EDWARD ADKINS (Authorized Agent: Edinger Family Limited Partnership)

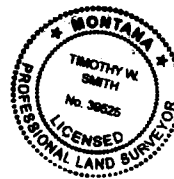
On this 26 day of NOVEMBER, 2018, before me, the undersigned, a Notary Public, personally appeared Edward Adkins, the Authorized Agent of Edinger Family Limited Partnership, known or verified to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that they executed the same.  
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

*Joseph T. Smith*  
NOTARY PUBLIC for the State of MT  
Residing in CORVALLIS  
My Commission Expires 8/4/2020



NOTES:

- The purpose of this survey is to retrace the tracts shown on the Plat of Mountain Park Orchards subdivision recorded in 1909 and per the retracement of the estates of said lots owned by the Edinger Family Limited Partnership, per CS# 678790-TR as recorded, and to establish access, road, utility and equestrian easements for said tracts.
- The monuments noted as set per this survey were completed on or before 11/12/2018.
- Ground distances shown.
- The total area of this survey is 174.95 acres.



SURVEYOR'S CERTIFICATE:

I hereby certify that this is a true and accurate retracement survey made by me or under my supervision with all monuments set on or before this date.

*Timothy W. Smith*      11-19-2018  
TIMOTHY W. SMITH, PLS. 38625      DATE

LEGEND

- ▲ - Set 5/8" x 1 1/2" rebar with green plastic cap stamped TIM W SMITH, PLS 38625
- - Found Yellow Plastic Cap stamped: Nelson 12673LS
- - - Property Corner in Roadway (Nothing Found or Set)
- - - Boundary Survey Line
- - - Section Line or Adjacent Boundary
- - - Easement Boundary
- (M) - Record Survey Measurement

**SMITH**  
ENGINEERING AND LAND SURVEYS, INC.

3035 POPPY LN  
CORVALLIS, MT 59828  
406-533-8848, josephsmith@gmail.com

SCALE: 1" = 200'	DATE: 11/19/2018
DRAWN BY: J. SMITH	REVISION DATE:
JOB NO: 2017-4102	

SHEET 2 OF 2

726662 - Page: 2 of 2

COV 726663



726663 - Page: 26 of 26