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Filed for Record at Request of and copy returned to:
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LUKINS & ANNIS, P.S.
1600 Washington Trust Financial Center
717 W Sprague Ave
Spokane, WA 99201-0466
Attention: Margo Mulberry

CG-39440

Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements

This Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements (hereinafter referred to as this "Declaration"), is made and executed as of the 16th day of August, 2004, by and among THE CARRINGTON COMPANY, a California corporation; and RONALD B. McINTIRE and JOANNE F. McINTIRE, husband and wife, and JOHN C. YOUNG, a single person. The Carrington Company is hereinafter referred to as "Carrington". Ronald B. McIntire and Joanne F. McIntire are hereinafter jointly referred to as the "McIntires". John C. Young is hereinafter referred to as "Young". Carrington, the McIntires and Young are hereinafter collectively referred to as the "Declarants".

WHEREAS, Carrington is the current owner of the real property located in the County of Flathead and State of Montana which is described in Exhibit "A" hereto and is hereinafter referred to as "Tract 2; and

WHEREAS, Carrington is also the current owner of the real property located in the County of Flathead and State of Montana which is described in Exhibit "B" hereto and is hereinafter referred to as "Tract 3; and

WHEREAS, the McIntires and Young have on this date purchased from Carrington and they are now the current owners of the real property in the County of Flathead and State of Montana which is described in Exhibit "C" hereto and is hereinafter referred to as "Tract 1"; and

WHEREAS, said Exhibits "A", "B" and "C" are attached hereto and, by this reference, made a part hereof; and

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1.1 **“Access Areas”** shall mean all areas on each Tract set aside for avenues of pedestrian and/or vehicular ingress and egress to, over and across the Center and to the public roads or other real property adjacent thereto, including ingress and egress between all contiguous Tracts thereof.

1.2 **“Building”** shall mean any structure or structures to be constructed within the Building Areas.

1.3 **“Building Areas”** shall mean: (i) the current location of the existing Building on Tract 2, which is as shown on the Site Plan; (ii) the area within Tract 1 shown as such on the Site Plan; and (iii) such other areas on Tract 1, Tract 2 and Tract 3 as may from time to time be so designated in accordance with the provisions of this Declaration. Promptly following the date of this Declaration the McIntires and Young shall cause the existing Building on Tract 1 to be demolished and a new Building to be constructed thereon, as depicted on the Site Plan.

1.4 **“Carrington”** shall mean The Carrington Company, a California corporation.

1.5 **“Center”** shall include all of Tract 1, Tract 2 and Tract 3, as well as any other Tract which may hereafter be created by future subdivision.

1.6 **“Common Areas”** shall mean all portions of all of the Tracts other than the portions thereof from time to time designated in accordance herewith as Building Areas, and include all Access Areas, Parking Areas, Utility Easement Areas, Signage Easement Areas, Drainage Easement Areas and Landscape Areas on each Tract devoted to access, ingress, egress, parking, pylon signs, sidewalks (excluding sidewalks adjacent and connected to Buildings) or landscaping (excluding landscaping confined within a Building Area). Areas (such as truck ramps or pits) used for parking, loading or unloading of trucks servicing or delivering goods to a business or businesses within a particular Building shall be deemed to be a part of the Building Area for such Building, and are not a part of the Common Area. Sidewalks adjacent and connected to a Building shall be deemed a part of the Building Area for such Building, and are not a portion of the Common Area. Canopies, if any, which extend over the Common Area and any columns or posts supporting them shall be deemed to be a part of the Building to which they are attached, and are not a part of the Common Area.

1.7 **“Declarants”** shall mean Carrington, the McIntires and Young, collectively.

1.8 **"Declaration"** shall mean this Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements, as the same may hereafter be supplemented or amended in accordance with the provisions hereof.

1.9 **"Drainage Easement Area"** shall mean all areas on each Tract set aside for drainage and/or collection of surface water.

1.10 **"Floor Area"** with respect to a Building shall mean the square footage of the floor area of such Building determined by measuring from the outside of each outside wall to the outside of the opposite outside wall measured as outside dimensions on the ground floors, except in the case of common walls which shall be measured from the center of such common walls; provided, however, that if any mezzanine, basement or second floor of a Building is used for the sale or display of merchandise, such floor area shall be deemed part of the Floor Area as herein defined. The Floor Area of any Building shall be adjusted as required to reflect the actual square footage as finally constructed. With respect to any portion(s) of a Building, the Floor Area of such portion(s) shall be determined by measuring the outside dimensions of such portion(s) thereof.

1.11 **"Landscape Areas"** shall mean all areas on each Tract on which grass, shrubs, trees and other landscaping type items are planted.

1.12 **"McIntires"** shall mean Ronald B. McIntire and Joanne F. McIntire, husband and wife.

1.13 **"Other Terms"** (whether or not capitalized) which may be defined in any subsequent Article of this Declaration shall have the meaning ascribed to them therein.

1.14 **"Owner"** shall mean the owner of the fee title to a Tract.

1.15 **"Parking Areas"** shall mean all areas on each Tract set aside for the parking, related maneuvering and passage of passenger motor vehicles and for passage of pedestrians.

1.16 **"Signage Easement Areas"** shall mean all areas, if any, on each Tract set aside for the installation, maintenance and operation of a pylon sign for the common use of Owners or tenants of two (2) or more Tracts.

1.17 **"Site Plan"** shall mean the Site Plan shown on Exhibit "D" which is attached hereto and, by this reference, incorporated herein, and includes any future amendments and supplements thereto.

1.18 **“Tract ”** shall mean each separate Tract of land contained in the Center held by any record Owner, including any separate parcel as may be created by future subdivision. The Tracts currently consist of Tract 1, Tract 2 and Tract 3.

1.19 **“Tract 1”** shall mean the real property described in Exhibit “C” hereto.

1.20 **“Tract 1 Owner”** shall mean the Owner of Tract 1.

1.21 **“Tract 2 ”** shall mean the real property described in Exhibit “A” hereto.

1.22 **“Tract 2 Owner”** shall mean the Owner of Tract 2.

1.23 **“Tract 3 ”** shall mean the real property described in Exhibit “B” hereto.

1.24 **“Tract 3 Owner”** shall mean the Owner of Tract 3.

1.25 **“Utility Easement Areas”** shall mean all areas on each Tract set aside for the installation, maintenance and operation of public utility services to a Tract or Tracts.

1.26 **“Young”** shall mean John C. Young, a single person.

ARTICLE II

Common Plan

The Declarants by this Declaration intend to establish a common plan for the development of the Center in order to ensure the protection, maintenance, and improvement of the Center, and to establish certain easements, covenants and reservations which are intended for the benefit of the Center and each Owner of each Tract thereof or interest therein, whether present or future, and which shall inure and pass with each of the Tracts and each and every interest therein.

ARTICLE III

Land Use

3.1 Permitted and Prohibited Uses.

(a) The Center may be used only for the construction, operation and maintenance thereon of retail/mercantile businesses, business and professional offices, financial institutions, and related facilities common to neighborhood/community type retail areas, and for Common Areas relating to and necessary for the operation of the foregoing. No portion thereof shall be used for warehousing (other than the temporary storage of fixtures, equipment, and inventory by an occupant of the Center), industrial, manufacturing, or residential purposes, except for the storage and/or manufacture of such

goods as are required as a necessary incident to the conduct of a particular retail/mercantile business, business or professional office, financial institution or related facility situated in the Center.

(b) No part of the Center other than Tract 1 shall be used for conduct of an Exclusive Tract 1 Business Enterprise. The term "Exclusive Tract 1 Business Enterprise" shall mean any pharmacy (of any size) and any retail store or department of any retail store containing more than two thousand five hundred (2,500) square feet of Floor Area, including aisle space, which Floor Area is primarily devoted to the retail sale of any one or any combination of the following: (i) food for off-premises consumption; (ii) a staffed bakery or bakery department selling items that are baked on site; (iii) the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; (iv) a staffed full-time floral department; or (v) the sale of alcoholic beverages for off-premises consumption, other than in conjunction with sale of such beverages for on-premises consumption. For purposes of this Declaration, a "pharmacy" means any store, business, trade or profession (whether operated separately or as part of another entity within the Center) which is engaged in the routine dispensing of prescription drugs by any appropriately licensed individuals, or which requires or has a license or permit to engage in business as a pharmacy from the State of Montana (or such agency thereof as may be empowered to license or permit the conduct of a pharmacy business) or which employs or is required to employ a registered pharmacist as such.

(c) No part of the Center other than Tract 2 shall be used for conduct of a Exclusive Tract 2 Business Enterprise. The term "Exclusive Tract 2 Business Enterprise" shall mean any video, dvd, or other electronic entertainment media sale or rental business of any size (excluding a business or department of a business owned by the Tract 1 Owner or the principal tenant of the Tract 1 Owner) and any business containing more than two thousand five hundred (2,500) square feet of Floor Area, including aisle space, which Floor Area is primarily devoted to the retail sale or provision of any one or any combination of the following goods or services: chiropractic care, barber shop, fitness center, salon and spa services, including sale of professional beauty products, tile and marble products, sporting goods and apparel, banking or financial services similar in

character to banking (other than automated teller machine services, which are not restricted), video sales or rentals (including tapes, dvd, or other electronic entertainment media) and "dollar only" sales. In addition, the term "Exclusive Tract 2 Business Enterprise" shall mean any business containing more than one thousand (1,000) square feet of Floor Area, including aisle space, which Floor Area is primary devoted to the provision of packaging or shipping services..

(d) No part of the Center shall be used as an adult book store, adult video store, adult night club, brothel, recycling facility, sales by transient merchants utilizing vehicles or booths (other than scheduled Center Promotional Outdoor Sales Events, as hereinafter provided for), shop selling illegal drugs or illegal drug paraphernalia, automotive repair facility, dance hall, billiard or pool hall, bowling alley, skating rink, warehouse or for the purpose of displaying, renting, leasing or selling any motor vehicle or trailer.

3.2 No Interference with Common Areas. No use of any portion of the Center shall materially interfere with the use of the Common Areas within the Center for the purposes for which they are intended as provided in this Declaration or impede the free flow of vehicular or pedestrian traffic thereon.

3.3 Conformity to Site Plan. Carrington has heretofore caused a Building and other improvements to be constructed on Tract 2 in substantial conformity with the Site Plan. The Building and other improvements to be constructed on Tract 1 shall substantially conform to the Site Plan. Thereafter, the configuration, shape, size and location of the Building Areas and related Common Areas within Tract 1 and Tract 2 as depicted on the Site Plan may from time to time be modified by the Owner of such Tract; provided that in no event shall any modification be made which would unreasonably restrict availability of sufficient Common Areas for the purposes for which they are intended as provided in this Declaration. There shall be no Building Area within the northerly two hundred eighty (280) feet of Tract 3; provided that notwithstanding the foregoing restriction, the Owner of Tract 2 shall have the right to expand the existing Building on Tract 2 onto a portion of the westerly twenty (20) feet of Tract 3.

3.4 **Development.** Each Tract shall be developed such that all code requirements applicable to development and use thereof are satisfied taking into account to the extent permitted by law the reciprocal easements granted hereunder.

ARTICLE IV

Restrictions of Use of Building Areas

4.1 **Building Design and Construction.** Each Building and other improvement (including signs) to be constructed, altered, remodeled, repaired or reconstructed in the Center shall be architecturally harmonious and compatible with the other Buildings and improvements from time to time located in the Center. All construction, alteration and repair work relative to the Center shall be accomplished in an expeditious manner, in compliance with all laws, rules, regulations, orders, permits, approvals, and licenses of governmental authorities having jurisdiction. The Owner or tenant undertaking such work shall take all necessary measures to minimize any disruption or inconvenience caused by such work. Such work shall be accomplished in such a manner as to minimize any damage or adverse effect which might be caused by such work to any other party. The Owner or tenant undertaking such work shall repair, at such Owner's or tenant's own cost and expense, any and all damage caused by such work and shall restore the affected portion of the Tract upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, the Owner or tenant undertaking such work shall promptly pay all costs and expenses associated therewith and shall indemnify and hold all other Owners harmless from all damages, losses or claims, including reasonable attorneys' fees and costs, attributable to the performance of such work.

4.2 **View Preservation.** In no event shall any Building be constructed within the westerly ninety-five (95) feet of Tract 1 or Tract 2, nor shall any other improvement be constructed thereon which would materially interfere with visibility of the Buildings depicted on the Site Plan from US Highway 93 North; provided that, notwithstanding the foregoing restriction, the Owner of Tract 1 shall have the right to construct a small Building within the westerly ninety-five (95) feet of Tract 1 which does not exceed three hundred (300) square feet of Floor Area, and is not more than twelve (12) feet in height.

4.3 **Automatic Sprinklers.** Every Building shall be either equipped with automatic sprinkler systems which meet all the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating of any other Building built upon any other Building Area. The purpose of this paragraph is to allow Buildings built on each Building Area to be fire-rated as separate and distinct units without deficiency charge.

4.4 **Location of Buildings.** All Buildings shall be placed or constructed on a Tract only within the Building Areas determined or hereafter modified pursuant to the terms of this Declaration. No Buildings or other improvements shall be placed or constructed within any Common Areas, except pylon signs, directional signs, bumper guards or curbs, landscape planters, lighting standards, and other landscaping and improvements as do not materially and adversely affect use of the Common Areas for the purposes specified herein, with the exception of any portion of the Common Area which may hereafter be designated as a Building Area in conformity with the provisions of this Declaration. In addition, any Owner may construct, install, repair, remove, replace and maintain sidewalks and walkways, and canopies and marquees (including such signs as may be affixed thereto) that may encroach a reasonable distance over or upon, as the case may be, the sidewalks and walkways contiguous to the applicable Building Area.

4.5 **Maintenance of Buildings.** The Owner of each Tract shall maintain, or cause to be maintained, in a safe, clean, and tenantable condition and in good order and repair, all Buildings (including, but not limited to, all loading docks, truck facilities and compactor areas) located on each Owner's Tract.

4.6 **Party Wall.** The reconstruction by the McIntires and Young of the Building on Tract 1 shall include, on the southern side, a wall to be shared between the Tract 1 Owner and the Tract 2 Owner as a "party wall" which said Owners shall have the right to use jointly. Either the Tract 1 Owner or the Tract 2 Owner may, in connection with the extension of such Owner's respective Building, extend the height of the party wall up to a maximum height of twenty-six (26) feet, so long as the extension is the same width as the existing wall and does not impair its strength or injure the foundations of the Buildings. In that event, the other Owner shall have the right to use the extended part of the wall as a part of the party wall. If it becomes necessary or

desirable to repair or rebuild the whole or any part of the party wall following its initial construction by the Tract 1 Owner, the repairing or rebuilding expense shall be borne equally by the Tract 1 Owner and the Tract 2 Owner. Any such repairing or rebuilding of the party wall shall be on the same location, and of the same size as the original wall or part of the original wall following its original construction by the Tract 1 Owner, and of the same or similar material of the same quality as that used in the original wall or part of the original wall. In the event that the party wall is damaged by the negligence of the Tract 1 Owner or the Tract 2 Owner, such damage shall be repaired at the expense of such party.

ARTICLE V

Common Areas

5.1 Use of Common Areas and Common Access Areas. The Common Areas shall be used for the following purposes only:

- (a) The parking of passenger vehicles and pedestrian and vehicular traffic.
- (b) The installation, maintenance, and operation of underground common and/or public utilities services serving any of the Building Areas, together with and including vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, conduits, and related facilities on site, storm drainage piping, and retention and detention ponds, and related facilities, and sewage facilities, all of which (except hydrants) shall, to the extent reasonably possible, be even with or below the surface of the ground.
- (c) The construction, maintenance, repair, replacement, rearrangement, and reconstruction of parking sites or stalls, streets, sidewalks, ramps, driveways, lanes, curbs, gutters, traffic control areas, signals, traffic islands, and traffic and parking lighting facilities.
- (d) The construction, maintenance, repair, replacement, and reconstruction of the signs (with appropriate underground electrical connections).
- (e) The construction, maintenance, repair, replacement and reconstruction of any landscaped areas including planters, planting boxes, edgers, decorative walls, and sprinklers and valves.
- (f) The ingress and egress of customers, visitors, invitees, licensees, and patrons (and their vehicles) to mercantile business, or professional establishments located

on the Building Areas and to and from any public streets adjacent thereto, and the ingress and egress of delivery and service trucks and vehicles to and from the Building Areas or any portion thereof and to and from any public streets adjacent thereto, for the delivery of goods, wares, merchandise, and the rendition of services to Owners and their respective heirs, successors, grantees, assigns and lessees.

(g) The ingress and egress of any of the persons designated in Subsection (f) above and their vehicles, to and from any portion of any Building Area and to and from the public streets adjacent thereto.

(h) The temporary parking of trucks, tractors, trailers and other delivery vehicles used in conjunction with any of the activities described in this Article.

(i) During the course of construction of any Buildings which may hereafter be constructed upon any of the Building Areas, those portions of the Common Areas immediately adjacent to the Building Area may be used by the Owner of the Building Area, or, with such Owner's written consent, by the tenant thereof for the temporary storage of construction materials and equipment used and to be used in connection with the construction of the Building, provided that such use thereof does not unreasonably interfere with normal use of the Common Areas.

(j) The display and sale of merchandise on the sidewalk area immediately adjacent to any Building, provided such activity does not extend into the common parking or vehicle traffic areas.

(k) The display and sale of merchandise on Parking Areas and/or on Landscape Areas, to the extent hereinafter specifically permitted in the following Section hereof.

(l) No parking, admission or use charge shall be imposed for the use and enjoyment of the Common Areas.

5.2 Parking Lot Sales. Portions of the Parking Areas and/or the Landscape Areas may be used for the display and sale of merchandise only as follows:

(a) The Tract 1 Owner and the Tract 2 Owner may allow their tenants who occupy all or a portion of the Buildings on said Tracts to sell seasonal or promotional

items thereon; provided that no such activities shall be conducted within sixty-five (65) feet of the common boundary between said Tracts.

(b) The Tract 3 Owner may allow sales of merchandise within any portion of Tract 3 except the northerly two hundred eighty (280) feet of Tract 3.

(c) The Declarants anticipate that farmers' markets, flea markets and similar activities (collectively, "Center Promotional Outdoor Sales Events") will occasionally be conducted within the Center in a manner consistent with practices prior to the date of this Declaration. The term "Center Promotional Outdoor Sales Events" shall not include fundraising efforts by community organizations, such as car washes, donut sales, bake sales, etc. The Tract 2 Owner shall have the right to use a portion of Tract 2, other than the northerly sixty-five (65) feet thereof, for up to twelve (12) Center Promotional Outdoor Sales Events during each calendar year, each such event encompassing multiple attractions and spanning a reasonable number of consecutive days, not to exceed three (3) consecutive days for any one event, unless otherwise agreed upon in writing between the Tract 1 Owner and the Tract 2 Owner. The Tract 3 Owner shall have the right to use any portion of Tract 3, other than the northerly two hundred eighty (280) feet thereof, for a reasonable number of Center Promotional Outdoor Sales Events during each calendar year, each such event encompassing multiple attractions and spanning a reasonable number of consecutive days. The Tract 1 Owner agrees to allow the Tract 2 Owner to use a portion of Tract 1 for up to four (4) Center Promotional Outdoor Sales Events during each calendar year, each such event encompassing multiple attractions and spanning a reasonable number of consecutive days; provided that the dates, duration and content of each such event shall be as further agreed upon in writing between the Tract 1 Owner and the Tract 2 Owner. The portion of Tract 1 to be used for such Center Promotional Outdoor Sales Events shall be as from time to time reasonably specified by the Tract 1 Owner; which area shall be not less than thirty-two thousand four hundred (32,400) square feet in size and located at the westerly end of Tract 1. The sponsor of any such Center Promotional Outdoor Sales Event shall, in advance of the event, deliver to the Tract 1 Owner a certificate of liability insurance naming the Tract 1 Owner as an additional insured, with coverage limits not less than the amount then required to be

maintained by the Owners, as hereinafter provided, and a deductible amount acceptable to the Tract 1 Owner.

(d) Any Owner may allow a portion of Parking Areas and the Landscaping Areas on the Tract owned by such Owner to be used for fundraising efforts by community organizations, such as car washes, donut sales, bake sales, etc., so long as such use is conducted in a manner which does not unreasonably interfere with normal use of the Common Areas.

5.3 Prohibited Use of Common Areas. The Common Areas shall not at any time be used for the parking of trucks (other than passenger trucks) or the loading or unloading thereof, except for: (i) the parking, loading or unloading of trucks during and in connection with construction of Buildings upon any of the Building Areas; (ii) the servicing and supplying of businesses within the Center (provided, however, that if at all possible such services and supplies shall be provided and delivered to such businesses from the Common Area at the rear of the Building Areas); (iii) the delivery or removal of trade fixtures, including signs; or (iv) the construction, repair, or maintenance of the Common Areas, including all improvements and facilities located thereon. Any such use shall be confined to the portion of the Common Areas which is reasonably necessary in connection with the matters herein specified and shall be diligently and promptly completed. No wall, fence or barrier of any kind shall be constructed or maintained on any Tract or portion thereof which would prevent or unreasonably impair the use or exercise of any of the easements granted hereunder, or the free access to and movement between Tracts, including without limitation pedestrian and vehicular traffic between Tracts.

5.4 Management of Common Area. Each Owner shall have exclusive management and control of the Common Areas on the Tract(s) owned by such Owner within the Center, including all improvements and landscaping thereon. Each Owner shall keep all such Common Areas or cause the same to be kept in good, clean, attractive, safe and sanitary condition, order and repair including, without limitation, painting, snow and ice removal, repair and replacement of surfacing and maintenance of landscaping, walkways and driveways. Each Owner shall have the right to exercise control over all of such Common Areas to: (i) remove any person from any Tract who is not a business invitee or customer of the Owner of such Tract; (ii) remove from such Tract unauthorized vehicles, vendors, salespersons, and/or any individuals who engage in

advertising, solicitation, leafleting, hand billing, patrolling, boycotting, picketing (including any "informational" picketing), distributing literature or written materials of any kind, or who otherwise attempt by any means to advise customers, employees or members of the general public of any political cause or candidate, any civil or fraternal organization or cause, or any other issue or dispute; and (iii) obtain assistance from any appropriate law enforcement agency and/or judicial authority in order to enforce the foregoing rights.

5.5 Common Area Liability Insurance.

(a) The Owner of each Tract shall maintain, or cause to be maintained, commercial general liability insurance on an occurrence form against any and all claims for personal injury or death and property damage occasioned by accident occurring upon, in or on the Buildings, Building Areas or Common Areas within such Tract. Such liability insurance coverage shall be in an amount of not less than One Million (\$1,000,000.00) Dollars per occurrence, with umbrella or excess coverage of at least Two Million (\$2,000,000.00) Dollars. Such insurance shall be underwritten by a company or companies admitted to do business in the state of Montana.

(b) At the written request of any Owner, the amount of such liability insurance coverage shall be periodically reviewed and if it is reasonably determined that such amount is inadequate, based on then normally accepted industry standards, the minimum amount of such liability insurance coverage shall be increased to conform to then current industry standards.

5.6 Taxes. The Owner of each Tract shall pay, or cause to be paid, directly to the tax authority, prior to delinquency, all real property taxes and other special taxes and assessments which may be levied or assessed against such Tract, including the portion of the Common Area within such Owner's Tract and including any assessment attributable to appurtenant interests created by this Declaration, subject to the right of any party to contest such taxes and assessments in the manner provided by law.

5.7 Common Area Lighting. The Owner of each Tract shall cause all Common Areas within such Tract, including all service and loading areas, to be adequately lighted during all normal business hours and such other hours of darkness as are necessary to ensure safety and

security. The Owner of each Tract shall pay, or cause to be paid, all expenses of electricity, maintenance and repair with respect to such lighting on such Owner's Tract.

5.8 Common Area Access Fee. The Common Areas on Tract 2 include a pylon sign on the Signage Easement Area of Tract 2. The Tract 1 Owner or tenant of the Tract 1 Owner shall have the nonexclusive right to use of the readerboard sign thereon, as hereinafter provided. The Tract 2 Owner shall timely pay all lease payments, electricity costs, and maintenance and repair costs relating thereto. The Common Areas on Tract 2 include avenues of ingress and egress between the Center and public roads adjacent thereto. The Tract 2 Owner shall keep all of such Common Areas in good condition and repair and timely pay all necessary expenses with respect thereto. In consideration thereof, the Tract 1 Owner shall pay an amount (a "Common Area Access Fee") to the Tract 2 Owner to partially reimburse the Tract 2 Owner for expenses incurred with respect to the forgoing. Initially, the Common Area Access Fee shall be the sum of Eight Hundred Eighty-two and No/100 (\$882.00) Dollars per month, payable on the date of this Declaration and on the first day of each calendar month thereafter; provided that if the date of this Declaration is other than the first day of a calendar month, the initial payment shall be prorated for the remainder of such calendar month. Effective January 1, 2006, and on the first day of each calendar year thereafter the Common Area Access Fee shall be increased by the lesser of: (i) five percent (5%) of the amount theretofore payable by the Tract 1 Owner in respect thereof; or (ii) a percentage thereof equal to the percentage increase, if any, then effective in the common area charges payable to the Tract 2 Owner by the tenants of Tract 2.

5.9 Rules and Regulations. Each Owner may from time to time establish, alter and amend reasonable rules and regulations regarding the use of the Common Areas within such Owner's Tract as may be reasonably necessary or advisable for the proper and efficient operation and maintenance of such Common Areas within the parameters of the purposes for which they are intended. Each Owner shall have the authority to exclude or restrain any person from the use or occupancy of such Common Areas if, in such Owner's reasonable judgment, that person is using such Common Areas in an unsafe manner or is committing excessive littering or loitering, or is parking vehicle(s) in the Common Areas for extended periods of time while not being a tenant, employee or customer shopping in the Center. Each Owner may also post temporary or permanent signs restricting or prohibiting improper use of such Common Areas and may retain

security personnel from time to time as may be necessary to ensure the safe and proper use of the Common Areas. Nothing contained herein shall serve to limit the rights of Owners tenants or their employees, customers and invitees from using the Common Areas for the purposes intended.

5.10 Temporary Closures. If necessary for the purpose of maintenance, repair, construction or reconstruction of improvements on any portion of the Common Areas, the Owner thereof shall have the right to temporarily restrict access to such portion of the Common Areas in a reasonable manner; provided that such temporary closure thereof shall not unreasonably interfere with normal or emergency use of the Common Areas.

5.11 Common Contracts. Nothing in this Declaration shall preclude two (2) or more Owners from entering into joint contracts with any third party upon such terms and conditions as may be acceptable to such Owners, pursuant to which such third party shall undertake management, maintenance and repair of the Common Areas within such Owners' Tracts, with the cost thereof to be allocated between such Owners in such manner as they may agree upon in writing.

ARTICLE VI

Easements

6.1 Grant and Declaration of Reciprocal Easements. The Declarants hereby grant to each and every Owner and their respective successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees, and invitees, and declare for the benefit of each of the respective Tracts within the Center permanent, mutual, reciprocal and nonexclusive easements for ingress, egress, access, parking, utility, signage, storm water drainage and retention, and landscaping within the Center, and rights to use the Common Areas for the purposes for which they are provided and intended in this Declaration

6.2 ATM Easement. The Tract 2 Owner has heretofore entered into a Lease dated June 24, 1997, and a First Amendment thereto dated May 4, 2002 (as amended, the "Bank Lease") with American Bank of Montana (the "Bank Tenant"). Pursuant to the Bank Lease, the Bank Tenant has been granted the right to maintain an automated teller machine ("ATM") at the southwesterly end of Tract 1. The Tract 1 Owner grants to the Tract 2 Owner an Easement for continued maintenance and operation by the Bank Tenant of the ATM at its present location,

which Easement shall commence on the date of this Declaration and terminate upon termination of the current term of the Bank Lease, after which it shall be of no further force or effect.

6.3 McDonald's Easement. The Declarants acknowledge that the predecessor in interest to Carrington has heretofore entered into an Easement Agreement with McDonald's Corporation, dated July 10, 1980, which was recorded in the office of the Clerk and Recorder of Flathead County, State of Montana, in Book 705, at page 930.

6.4 Use of Easements. The easements and rights-of-way established by this Declaration shall be for the benefit of and restricted solely to the use of the Owners and their respective successors and assigns, lessees and sublessees, mortgagees under mortgages covering any of the Center, beneficiaries and trustees under deeds of trust covering any of the Center, and to their agents, customers, employees, licensees, and business invitees, and the same are not intended and shall not be construed as creating any rights in or for the benefit of the general public, provided that the declaration and grant herein is subject to the provisions of this Declaration.

ARTICLE VII

Utility Easement Areas

7.1 Designation of Utility Easement Areas. The Owner of each Tract shall have the right to determine in a reasonable manner the portion(s) of such Owner's Tract to be designated as Utility Easement Areas and the right to change such designation from time-to-time; provided that at all times a Utility Easement Area or Utility Easement Areas shall be maintained on each Tract to the extent necessary to provide reasonable utility services to all Tracts, including areas on both sides of utility lines as is the ordinary custom and practice to provide for the installation, operation and maintenance of utility lines. The Utility Easement Areas shall be further defined and placed of record in conjunction with installation of utility lines thereon. All Utility Easement Areas shall, to the extent possible, permit the following of the most direct route to tie into common transmission lines, except where such direct route would unnecessarily disrupt or damage Buildings or improvements or pass within fifteen (15) feet of the boundary of any Building Area on said Tracts.

7.2 Use of Utility Easement Areas. All such Utility Easement Areas shall be available for the purpose of installation, maintenance and repair of utility lines servicing the

individual Tracts. No Utility Easement Area shall be used as a Building Area and no Buildings shall be constructed thereon; however, the provisions of this Declaration shall not be construed to prohibit the use of Utility Easement Areas as Parking Areas or for other purposes so long as such use does not unreasonably restrict the availability of Utility Easement Areas for installation, maintenance and repair of utility lines. Such utility lines may, without limitation, include water lines, water sprinkler system lines, fire hydrant water lines, electrical lines, gas lines, sanitary storm and sewer lines, storm drains, telephone lines, cable television lines and lines for any other utility services from time-to-time made available to the Tracts. Without limiting the generality of the foregoing, the Utility Easement Areas may be used for the installation, operation, maintenance, repair, relocation and removal of any vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, conduits and related facilities required for the operation of such utility lines, all of which (except fire hydrants) shall, to the extent reasonably possible, be even with or below the surface of the ground.

7.3 Utility Installation, Maintenance and Repair. No Owner shall have any responsibility for installation, maintenance or repair of any utility line which provides service to any Tract owned by any other Owner. If an Owner desires to enter onto any Utility Easement Area on any Parcel that is not owned by such Owner, for the purpose of installation, maintenance or repair of any utility line, such Owner shall provide two (2) weeks' written notice to the Owner of the other Parcel of the intent to do so, except in the case of an emergency, in which case, as much notice as is reasonably possible shall be given. All such work shall be done at the sole expense of the Owner of the Parcel serviced by such utility line and shall be done in such a manner as to cause as little disturbance as reasonably possible in the use of the Parcel over which such utility line may run and in conformity with all applicable law. All damage caused by such installation, maintenance or repair shall be promptly repaired in a good workmanlike manner at the sole cost of the Owner of the Tract serviced by such utility line, which repair shall include resurfacing any paved areas which may be disturbed thereby and replanting of any landscaped areas which may be disturbed thereby.

7.4 Changes in Utility Easement Areas. Changes in the sizes, location and arrangement of those portions of each Tract used for Utility Easement Areas may be made from time-to-time in a reasonable manner by the Owner thereof; provided however that if any such

change requires relocation of any utility line: (i) the Owner desiring to make such change shall first provide thirty (30) days' written notice of the intent to do so to the Owners of all other Tracts; (ii) such change shall not unreasonably interfere with or diminish availability of utility services to any Tract or the use of any Building Area or Common Area; (iii) such change shall be performed at the sole cost of the Owner making the change; and (iv) such change shall be made in accordance with and subject to all applicable local ordinances, building codes, requirements of the provider of such utility services and other applicable requirements of law.

ARTICLE VIII

Parking Areas

8.1 Designation of Parking Areas. The Owner of each Tract shall have the right to determine in a reasonable manner the portion(s) of such Owner's Tract to be designated as Parking Areas and the right to change such designation from time-to-time; provided that: (i) at all times following completion of construction of any Building on a Tract, there shall be maintained or caused to be maintained thereon a paved Parking Area or paved Parking Areas, which include parking spaces on each Tract in a cumulative total not fewer than the number required by local officials pursuant to applicable law for available parking spaces in the Center; and (ii) the Parking Areas on each Tract shall substantially conform to the Site Plan. Promptly following the date of this Declaration, the Tract 3 Owner shall, at the sole expense of the Tract 3 Owner, cause a portion of Tract 3 to be paved and striped for use as a Parking Area, as depicted on the Site Plan, which work shall be completed no later than October 31, 2005.

8.2 Use of Parking Areas. All such Parking Areas shall be available for the purpose of common use thereof by the Owners of the Tracts and their successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees and business invitees for parking, related maneuvering and passage of passenger motor vehicles and for passage of pedestrians; provided that employee parking shall be subject to the restrictions set forth in the following Section hereof.

8.3 Employee Traffic and Parking. All Owners and their respective successors, assigns, lessees and sublessees shall make all reasonable efforts to advise their respective employees, contractors, and agents of the importance of carpooling, staggered work shifts and other similar measures to reduce employee traffic within the Center during peak hours. The

Owner of each Tract shall designate a reasonable area on such Tract for employee parking, which shall include: (i) not less than sixty (60) employee parking spaces on Tract 1; (ii) not less than forty (40) employee parking spaces on Tract 2; and (iii) not less than twenty (20) employee parking spaces on Tract 3. Each Owner shall inform the other Owners of the areas from time to time so designated for employee parking (the "Employee Parking Areas"). The Employee Parking Areas on Tract 3 shall be available for parking by employees of tenants of the Tract 1 Owner and employees of the tenants of the Tract 2 Owner. The Tract 1 Owner and the Tract 2 Owner shall make all reasonable efforts to cause the employees of their respective tenants to park their personal vehicles on the Tract owned by such Owner or on Tract 3; and, alternatively, to park if necessary only in the Employee Parking Areas which have been so designated by the adjacent Owner on the adjacent Owner's Tract.

8.4 Parking Area Maintenance. All driving aisles, parking aisles, driveways and parking spaces contained within the Parking Areas shall be properly graded, leveled and paved with concrete or asphalt and shall also be properly marked with painted lines for the orderly flow of traffic and the parking of motor vehicles. All Parking Areas shall be provided with appropriate access to driving aisles, driveways of adequate width and Access Areas. The Owner of each Tract shall at all times provide or cause to be provided in a timely manner: (i) all necessary removal of debris from the Parking Area(s) on such Tract; (ii) all necessary snow removal from such Parking Area(s), such removal to occur at any time snow depth equals or exceeds two (2) inches, provided that no snow berms or snow storage piles shall be deposited from any Owner's Tract to any other Owner's Tract; and (iii) all necessary maintenance, repair and resurfacing of such Parking Area(s), including any necessary repaving and restriping.

8.5 Changes in Parking Areas. Changes in the sizes, location and arrangement of those portions of each Tract used for Parking Areas and the traffic circulation and flow pattern thereon may be made from time-to-time in a reasonable manner by the Owner thereof; provided: (i) such changes are in accordance with the provisions of this Declaration; (ii) the required number of parking spaces are at all times maintained on each Tract; and (iii) Access Areas are to be maintained on each Tract, all as herein required.

ARTICLE IX

Access Areas

9.1 **Designation of Access Areas.** Subject to applicable legal requirements, the Owner of each Tract shall have the right to determine in a reasonable manner the portion(s) of such Owner's Tract to be designated as Access Areas and the right to change such designation from time-to-time; provided, that there shall be maintained at all times reasonable avenues of ingress and egress for pedestrians and motor vehicles from public highways and roadways to and from Tract 2 and between each contiguous Tract and the Access Areas on each Tract shall substantially conform to the Site Plan. The Declarants anticipate that in the future the owner of the real property adjacent to and lying easterly of Tracts 1 and 3 will cause a public street to be constructed and dedicated on the area identified as Whitefish Avenue on the Site Plan. The Tract 3 Owner has obtained an Easement from the owner of said adjacent property for ingress, egress and utilities, which Easement area shall constitute an Access Area for access to the easterly portion of Tract 1 and to Tract 3 and a Utility Easement Area during the period until Whitefish Avenue may be constructed and dedicated.

9.2 **Use of Access Areas.** All such Access Areas shall be available for the purpose of common use thereof by the Owners and their successors, assignees, mortgagees, lessees, sublessees, employees, agents, customers, licensees and business invitees for ingress, egress and passage of pedestrians and motor vehicles.

9.3 **Access Area Maintenance.** All Access Areas shall be properly graded, leveled and paved with concrete or asphalt and shall also be properly marked with painted lines for the orderly flow of traffic. The Owner of each Tract shall at all times provide or cause to be provided in a timely manner: (i) all necessary removal of debris from the Access Area(s) on such Tract; (ii) all necessary snow removal from such Access Area(s), such removal to occur at any time snow depth equals or exceeds two (2) inches; and (iii) all necessary maintenance, repair and resurfacing of such Access Area(s), including any necessary repaving and restriping.

9.4 **Changes in Access Areas.** Changes in the sizes, location and arrangement of those portions of each Tract used for Access Areas and the traffic circulation and flow pattern thereon may be made from time-to-time by the Owner thereof in a reasonable manner, but only

with the prior written consent of all Owners, which consent shall not be unreasonably withheld or delayed.

ARTICLE X

Drainage Easement

10.1 Grant of Drainage Easement. The Owner of each Tract shall have the right to determine in a reasonable manner the portion(s) of such Owner's Tract to be designated as Drainage Easement Areas and the right to change such designation from time-to-time; provided that at all times a Drainage Easement Area shall be maintained on each Tract to the extent necessary to provide for collection and drainage of surface water from any adjoining Tract. The Drainage Easement Areas shall be those surface areas of the Tracts allowing for the free flow of surface water to collection and drainage facilities. There shall be no obstruction of the free flow of surface water over and across the Tracts to the areas set for the retention and drainage thereof. Drainage Easement Areas shall at all times be maintained upon the Tracts in conformity with all requirements of law.

10.2 Drainage Easement Area Maintenance. The Owner of each Tract shall at all times provide or cause to be provided in a timely manner all necessary maintenance of the Drainage Easement Area(s) of such Tract.

10.3 Changes in Drainage Easement Areas. Changes in the sizes, location and arrangement of those portions of each Tract used for the collection and drainage of surface water may be made from time-to-time in a reasonable manner by the Owner thereof; provided that reasonable areas for the collection and drainage of surface water are at all times maintained upon each Tract.

ARTICLE XI

Landscape Areas

11.1 Designation of Landscape Areas. The Owner of each Tract shall determine in a reasonable manner those portions of such Owner's Tract to be used as Landscape Areas. The Landscape Areas within the Tracts shall consist of the portions, if any, of the Tracts on which from time-to-time grass, shrubs, trees or other landscaping type items may be planted.

11.2 Landscape Area Maintenance. The Owner of each Tract shall at all times provide or cause to be provided in a timely manner all necessary maintenance of the Landscape Area(s) on such Tract, including watering and the cutting of grass in a timely manner.

11.3 Changes in Landscape Areas. Changes in the sizes, location and arrangement of those portions of each Tract used for Landscape Areas may, from time-to-time, be made in a reasonable manner by the Owner thereof.

ARTICLE XII

Signage

12.1 Designation of Signage Easement Areas. A Signage Easement Area is located and shall be maintained at the northwesterly corner of Tract 2. A pylon sign (the "Center Sign") is located thereon. In addition to the Signage Easement Area for the Center Sign, the Owner of each Tract shall have the right to determine in a reasonable manner the other portions, if any, of such Owner's Tract to be used as additional Signage Easement Areas.

12.2 Sign Regulations. Pursuant to the current Sign Ordinance of the City of Whitefish, Carrington has heretofore entered into a Mountain Mall Sign Agreement (the "Sign Agreement") with the City of Whitefish, dated June 3, 2004. All signs in the Center shall conform to said Sign Agreement and to all applicable rules and regulations of the City of Whitefish, Montana, and all other requirements of law, and be designed and located so as not to conflict with the easements granted hereunder. The Sign Agreement may be amended only with the written consent and approval of the Tract 1 Owner and the Tract 2 Owner, which consent and approval shall not be unreasonably withheld or delayed by either of them.

12.3 Center Sign. The Tract 2 Owner shall, at the Tract 2 Owner's expense cause the Center Sign and the Signage Easement Area on which it is located to be remodeled and landscaped all in accordance with the provisions of the Sign Agreement, which work shall be completed no later than November 1, 2004. The Tract 2 Owner shall keep the Center Sign in good condition and repair and be responsible for and timely pay all costs associated with maintenance with the Center Sign, including all costs of maintenance and repair thereof, electrical service thereto, and taxes and insurance thereon. The Tract 2 Owner grants to the Tract 1 Owner an easement for the use of the Center Sign. Such easement shall remain in effect throughout the term of this Declaration, commencing with the date of this Declaration and shall

pertain to any permanent, main, highway-visible sign utilized by the Tract 2 Owner to advertise the Center, including any relocated, redesigned or reconfigured Center Sign. Such use by the Tract 1 Owner may be of a total of ten percent (10%) of the display area allowed by government sign regulation for free-standing signage (which at the time of this Declaration would allow the Tract 1 Owner to use eighty (80) square feet of display area). Such use may include display of the business name and logo of the primary tenant of the Tract 1 Owner, and the location of said portion of the display area shall be directly below the portion of the Center Sign displaying the name of the Center (above the readerboard). The Tract 2 Owner's manager, prior to display, must approve all signs in writing, which approval shall not be unreasonably withheld or delayed. All costs of creation, replacement and removal of signs advertising a business located on Tract 1 shall be borne by the Tract 1 Owner. For so long as the Tract 2 Owner maintains an electronic readerboard type sign, the Tract 1 Owner may use up to twenty percent (20%) of the readerboard message time allowed by government sign regulation. The Tract 2 Owner shall maintain such an electronic readerboard type sign for so long as allowed by government sign regulation. The Tract 1 Owner (or such Owner's tenant) may submit message requests to the Tract 2 Owner's manager within a reasonable time prior to display programming, and the Tract 2 Owner may edit readerboard material for content and length in a reasonable manner; provided that all such edits must be submitted to the Tract 1 Owner (or such Owner's tenant) for approval prior to display thereof, which approval shall not be unreasonably withheld or delayed. The Center Sign shall be exclusively for use of the Tract 1 Owner, the Tract 2 Owner and their tenants, and may be used for community or public service announcements, including displays of date, time and temperature.

12.4 Cinema Sign. A pylon sign (the "Cinema Sign") is currently located at the southwesterly corner of Tract 1, which is used to advertise a theater operated on Tract 2. The Tract 1 Owner grants to the Tract 2 Owner an Easement for the use of the Cinema Sign. Such Easement shall remain in effect throughout the term of this Declaration. The Tract 2 Owner shall keep the Cinema Sign in good condition and repair and be responsible for and timely pay all costs associated with maintenance of the Cinema Sign, including all costs of maintenance and repair thereof, electrical service thereto, and taxes and insurance thereon. If the Cinema Sign is

altered or redesigned, the Tract 2 Owner shall, at the sole expense of the Tract 2 Owner, cause the same to conform to all requirements of the Sign Agreement in respect thereof.

12.5 Building Mounted Signage. Pursuant to the Sign Agreement, tenants of the Center are entitled to display no more than fifteen (15) building mounted signs having a size of no more than a combined total of one thousand four hundred seventy-five (1,475) square feet, that are visible from Spokane Avenue (Highway 93). Of that total, the Tract 1 Owner and the tenants of the Tract 1 Owner shall be entitled to display up to a maximum of two (2) building mounted signs on the Building on Tract 1, having a combined total size of no more than four hundred eighty (480) square feet.

12.6 Signs on Rear of Center. Pursuant to the Sign Agreement, tenants of the Center are entitled to maintain two (2) building mounted signs on the rear (facing east) of the Buildings in the Center, consisting of a combined total of eighty-four (84) square feet. The Tract 2 Owner and the tenants of the Tract 2 Owner shall be entitled to use and maintain both of such signs on the rear of the Building on Tract 2. This signage is in addition to the signage provided for in the preceding Section of this Declaration.

12.7 Other Signage. Each Owner shall have the right to maintain such other signage on such Owner's Tract as may be permitted by the Sign Agreement and other requirements of law, and without limiting the generality of the foregoing, each Owner shall maintain such directional signage on such Owner's Tract as may be reasonably necessary for proper use of the Common Areas thereon and each Owner and such Owner's tenant(s) shall have the right to place temporary signs in windows or paint such signs on windows to the extent permitted by law.

ARTICLE XIII

Condemnation and Casualty

13.1 Condemnation. If at any time or times all or any part of the Center shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Center in lieu of condemnation but under threat of condemnation, shall be deemed to be a taking by eminent domain.

13.2 Proceeds. All compensation, damages, and other proceeds for any such taking by power of eminent domain (hereinafter the "Condemnation Award") attributable to the value of

any land or improvements thereon within the Common Areas shall be payable only to the Owner thereof and no claim thereon shall be made by the other Owners; provided, however, that all Owners may file collateral claims with the condemning authority over and above the value of the land and improvements located within the Common Areas so taken to the extent of any damage suffered by such Owners resulting from severance of the appurtenant portions of the Common Areas so taken. The Owner of the portions of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas so owned by such Owner as near as practicable to the condition as existed immediately prior to the condemnation and without contribution from any other Owner; provided, however, that the obligation to repair or reconstruct shall be limited such that the cost thereof shall not exceed the amount of the Condemnation Award payable to the Owner of the Common Areas so condemned, less said Owner's costs including, but not limited to, attorneys' fees and court costs arising out of the condemnation proceedings.

13.3 Casualty. In the event of destruction or damage from fire or any other casualty to any Buildings or improvements erected on the Center, the Owner of the Buildings or improvements which are destroyed or damaged, at such Owner's sole cost and expense, shall within six (6) months of the date of such fire or casualty have: (i) started to rebuild or repair the same; or (ii) leveled and paved the same. If any Owner elects to rebuild or repair, such Building and/or improvements shall be rebuilt to at least substantially the same size and to as good a condition as such was in immediately preceding such fire or casualty, such rebuild to be substantially completed within one (1) year of the date of such fire or casualty. If the Owner elects to level and pave the area containing Buildings or improvements destroyed or damaged, the same shall be leveled and paved so that the affected area conforms substantially to the Common Areas surrounding it. Anything in this Section notwithstanding, if such event shall destroy five percent (5%) or less of the ground Floor Area of such Building, then the Owner of such Building shall have no option to level and pave. Instead, the Owner shall rebuild or repair the Buildings in accordance with this Section.

ARTICLE XIV

Approvals

Upon receipt by any Owner of a request for any approval required hereunder, such Owner shall, within thirty (30) days after receipt of such request, notify in writing the party making such request of any objections thereto (such objections to be specifically stated) and such requesting party may within fifteen (15) days thereafter resubmit its request for approval, such request rectifying any such objections. The applicable Owner shall then have an additional fifteen (15) days after receipt of said revisions to approve or disapprove same. Failure to give any written notice of disapproval within the periods provided for above shall constitute approval thereof by the party required to give such approval.

ARTICLE XV

Enforcement

15.1 The right to enforce the terms, covenants and easements contained herein shall belong only to the Owners, lessees of the Owners, if any, and to mortgagees under mortgages covering any of the Center, and beneficiaries and trustees under deeds of trust covering any of the Center; provided that the lease or memorandum of lease in favor of such lessee, mortgage in favor of such mortgagee, or deed of trust in favor of such beneficiary and trustee is recorded in the office of the Clerk and Recorder of Flathead County, Montana.

15.2 In the event of any violation or threatened violation of any of the terms, restrictions or covenants contained herein, any person entitled to enforce this Declaration will have, in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

15.3 If performance of any act or obligation of any party is prevented or delayed by an act of God, war, labor disputes, or other cause or causes beyond the reasonable control of such party, the time for the performance of the act or obligation shall be extended for the period that such act or performance is actually delayed or prevented by any such cause.

15.4 In the event that any suit is brought for the enforcement of any provision of this Declaration or as the result of any alleged breach thereof or for a declaration of rights and duties hereunder, the substantially prevailing party or parties to such suit shall be entitled to collect

reasonable attorneys' fees and costs from the party or parties not substantially prevailing, and any judgment or decree rendered shall include an award thereof.

15.5 It is expressly agreed that a breach or violation of this Declaration will not terminate this Declaration, but this limitation will not affect, in any manner, any rights or remedies for any breach of this Declaration.

15.6 A breach or violation of any of the terms, covenants, or restrictions of this Declaration will not defeat or render invalid the lien of any first mortgage or first deed of trust, made in good faith and for value, or any mortgages securing construction financing on any Tract, but such term, covenants, or restriction will be binding on and be effective against anyone whose title to any portion of the Center is acquired by foreclosure, trustee's sale or otherwise.

15.7 The specified remedies to which any person or entity entitled to enforce this Declaration may resort under the terms of this Declaration are cumulative and are not intended to be exclusive of any other remedies or means of redress to which any person entitled to enforce this Declaration may be lawfully entitled in case of any breach or threatened breach of any provision of this Declaration. Failure to insist in any one or more cases upon the strict performance of any of the covenants of this Declaration or to exercise any remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such covenant or remedy.

ARTICLE XVI

Right of First Refusal

If at any time within thirty (30) years following the date hereof the Tract 1 Owner desires to sell fee title to Tract 1, the Tract 1 Owner shall give written notice (an "Intent to Sell Notice") thereof to the Tract 2 Owner. During the thirty (30) day period (the "Offer Period") following the date such an Intent to Sell Notice is given, the Tract 2 Owner shall have the right to submit an offer (a "Tract 2 Owner's Offer") to purchase Tract 1 from the Tract 1 Owner. Any such Tract 2 Owner's Offer shall be submitted to the Tract 1 Owner in writing, and shall state the total purchase price and terms upon which the Tract 2 Owner offers to purchase Tract 1 from the Tract 1 Owner. If a Tract 2 Owner's Offer is so submitted, it shall provide that if it is accepted by the Tract 1 Owner, the purchase price stated therein shall be paid in full in same-day funds upon closing of the transaction and the transaction shall be closed in the office of such title

insurance company in Flathead County, Montana, as is specified by the Tract 1 Owner. If a Tract 2 Owner's Offer is submitted within the Offer Period to the Tract 1 Owner, the Tract 1 Owner shall give written notice (and "Acceptance or Rejection Notice") to the Tract 2 Owner of acceptance or rejection thereof within fifteen (15) days following expiration of the Offer Period. If the Acceptance or Rejection Notice states that the Tract 1 Owner accepts the Tract 2 Owner's Offer, Tract 1 shall be sold by the Tract 1 Owner to the Tract 2 Owner at the purchase price and upon the terms and conditions stated in the Tract 2 Owner's Offer. If the Acceptance or Rejection Notice states that the Tract 1 Owner rejects the Tract 2 Owner's Offer, the Tract 1 Owner and the Tract 2 Owner shall negotiate in good faith for a period of fifteen (15) days (the "Negotiation Period") following the date such Acceptance or Rejection Notice is given, in an attempt to come to an agreement with respect to a purchase price and terms for sale of Tract 1 by the Tract 1 Owner to the Tract 2 Owner.

If no Tract 2 Owner's Offer is submitted during the Offer Period, for a period of three hundred sixty (360) days following expiration of the Offer Period the Tract 1 Owner shall be a free agent to sell Tract 1 to any third party at such price and upon such terms as the Tract 1 Owner may accept. Following expiration of said three hundred sixty (360) day period, the Tract 1 Owner shall thereafter not sell Tract 1 to any third party without first again issuing an Intent to Sell Notice and complying with the foregoing provisions.

If a Tract 2 Owner's Offer is timely submitted within the Offer Period and the parties are unable to come to an agreement regarding the price and terms for sale of Tract 1 to the Tract 2 Owner prior to expiration of the Negotiation Period, for a period of three hundred sixty (360) days following expiration of the Negotiation Period the Tract 1 Owner shall be a free agent to sell Tract 1 to any third party; provided that if the Tract 1 Owner receives a purchase offer from any third party (a "Third Party Offer") which the Tract 1 Owner desires to accept, and the purchase price offered by such third party is less than ninety-eight percent (98%) of the purchase price theretofore offered by the Tract 2 Owner in such Tract 2 Owner's Offer, and the Tract 1 Owner desires to accept such lower purchase price, the Tract 1 Owner shall first submit such Third Party Offer to the Tract 2 Owner in writing (a "Third Party Offer Submission"), with a statement that the Tract 1 Owner is willing to accept such Third Party Offer. In that event, within fifteen (15) days following such Third Party Offer Submission the Tract 2 Owner may give

notice (and "Acceptance Notice") to the Tract 1 Owner of the agreement of the Tract 2 Owner to purchase Tract 1 at the price and upon the terms set forth in such Third Party Offer. If such an Acceptance Notice is timely given, the Tract 2 Owner shall purchase Tract 1 from the Tract 1 Owner at the price and upon the terms set forth in such Third Party Offer. If such an Acceptance Notice is not timely given, the Tract 1 Owner shall be a free agent to sell Tract 1 to such third party at the price and upon the terms set forth in such Third Party Offer. If no Third Party Offer is submitted to the Tract 2 Owner within said three hundred sixty (360) day period, the Tract 1 Owner shall not thereafter sell Tract 1 to any third party without first again issuing an Intent to Sell Notice and complying with the foregoing provisions.

If Tract 1 is sold to the Tract 2 Owner pursuant to the foregoing provisions, and either party so requests, the other party shall cooperate in effecting an exchange under Section 1031 of the Internal Revenue Code, provided that the party so requesting shall bear all additional costs resulting therefrom.

The foregoing provisions of this Article shall not apply to any conveyance by the Tract 1 Owner of Tract 1 to any entity or person controlling, controlled by or under common control with the Tract 1 Owner, nor to any testamentary transfer by a Tract 1 Owner effective upon the death of such Tract 1 Owner; provided that in each such case the foregoing first preference to purchase shall survive any such conveyance or transfer.

ARTICLE XVII

Duration

This Declaration and each easement, covenant, condition and restriction hereby created shall continue for a period of fifty (50) years from the date hereof, unless terminated, modified or amended by an instrument executed as herein set forth and duly recorded in the office of the Clerk and Recorder of Flathead County, State of Montana.

ARTICLE XVIII

Amendments or Modifications

18.1 Consent to Modification. This Declaration and any provision, covenant, or easement contained herein may be terminated, extended, modified, or amended with the written consent of the then Owners, each mortgagee under mortgages covering any of the Center owned by an Owner and each beneficiary and trustee under trust deeds covering any of the Center;

provided, however, that no termination, extension, modification or amendment of this Declaration shall be effective unless a written instrument setting forth the terms thereof has been executed as herein provided, acknowledged, and recorded in the office of the Clerk and Recorder of Flathead County, State of Montana;

18.2 No Consent of Other Persons. Anything in this Article to the contrary notwithstanding, no lessee or licensee or any other person having any interest in the Center other than those persons specifically designated in the foregoing Section need consent to any termination, extension, modification or amendment of this Declaration or any part hereof.

ARTICLE XIX

Miscellaneous

19.1 Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Center to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Declaration will be strictly limited to and for the purpose expressed herein.

19.2 Severability. If any clause, sentence, or other portion of the terms, covenants or restrictions of this Declaration becomes illegal, null or void for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions shall remain in full force and affect.

19.3 Dominant and Servient Estates. Each and all of the easements and rights granted or created herein are appurtenances to the applicable portions of the Center and none of such easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions. For the purposes of such easements and rights, the property benefited shall constitute the dominant estate, and the particular areas of the Center which respectively are burdened by such easements and rights shall constitute the servient estate.

19.4 Covenants Run with Land. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration (whether affirmative or negative in nature) (a) are made for the direct, mutual, and reciprocal benefit of each Tract hereinabove described; (b) will create mutual equitable servitudes upon each Tract in the Center in favor of the Center; (c) will bind every person having any fee, leasehold, or other interest in any portion of the Center at any time or from time to time to the extent that such portion is affected or bound

by the covenant, restriction or provision is to be performed on such portion; and (d) will inure to the benefit of the Owners and their respective successors and assigns as to the respective Tracts in the Center and to the benefit of mortgagees under mortgages covering the Center and beneficiaries and trustees under trust deeds covering the Center.

19.5 Compliance with Laws. All Owners shall comply promptly with all federal, state and municipal statutes and ordinances, and with all regulations, orders and directives of appropriate governmental agencies pertaining to the use or occupancy of the Center, as such statutes, ordinances, regulations, order and directives now exist or may hereafter provide.

19.6 Benefit and Burden. The terms, covenants, and conditions contained herein shall inure to the benefit of and shall be binding upon the Declarants, all Owners, and any other person having any interest in the Center and their respective legal representatives, successors and assigns.

19.7 Intent and Purpose. The provisions of this Declaration, and any supplement or amendment hereto, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Center. Failure to enforce any provision, restriction, covenant or condition in this Declaration, or in any supplement or amendment hereto, shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants or conditions.

19.8 Construction. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define or otherwise affect the content, meaning, or intent of this Declaration or any Article, Section or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

19.9 Registration of Mailing Address. Each Owner shall register from time to time with all other Owners the current mailing address of such Owner. All notices or demands intended to be served upon any Owner may be sent by first-class U.S. mail, postage prepaid, addressed to the Owner at its registered mailing address, or, if no address has been registered, to

the Building address of such Owner. Any notice or demand referred to in this Declaration shall be deemed given when deposited in the U.S. mail, postage prepaid, and in the form provided for in this section.

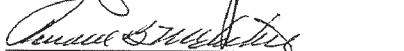
19.10 Effective Date. This Declaration shall take effect immediately upon recording.

19.11 Owner Obligations. All obligations of each Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that such Owner may be leasing, renting, or selling such Owner's Tract under an Owner financed real estate contract. An Owner shall have no obligation for expenses or other obligations accruing hereunder after such Owner conveys the fee title for such Owner's Tract to another party.

IN WITNESS WHEREOF, the Declarants have duly executed this Declaration the day and year first above written.

"Declarants":
THE CARRINGTON COMPANY,
a California corporation

By: 
Francis Carrington, President

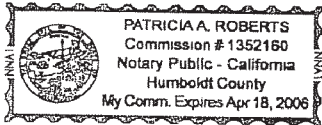

Ronald B. McIntire


Joanne F. McIntire


John C. Young

STATE OF CALIFORNIA)
) : SS
County of Humboldt)

On this 11 day of August, 2004, before me personally appeared FRANCIS CARRINGTON, to me known to be the President of THE CARRINGTON COMPANY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of said corporation.



(Seal or Stamp)

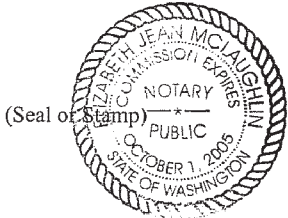
Patricia A. Roberts
Notary Public (Signature)
Patricia A. Roberts
(Print Name)

My commission expires: 4/18/06

STATE OF DA California)
) : SS
County of USPPKUM Humboldt)

On this 13 day of August, 2004, personally appeared before me RONALD B. McINTIRE and JOANNE F. McINTIRE, husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER my hand and official seal the day and year in this certificate first above written.



(Seal or Stamp)

Elizabeth Jean McLaughlin
Notary Public (Signature)
Elizabeth Jean McLaughlin
(Print Name)

My appointment expires: 10-1-05

2004233 16410

STATE OF WASHINGTON)
: ss
County of SPOKANE)

On this 13 day of August, 2004, before me personally appeared JOHN C. YOUNG, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he signed and sealed the same as his own free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.



(Seal or Stamp)

John F. Bury
Notary Public (Signature)
John F. Bury
(Print Name)

My appointment expires: 11-15-06

2004233 16410

EXHIBIT "A"

to

**Declaration of Covenants, Conditions, Restrictions and
Reciprocal Easements**

Legal Description of Tract 2:

Tract 2 of Certificate of Survey No. 16257, recorded on
August 20, 2004, under Recording No. 2004 233 16370, with the Clerk and
Recorder of Flathead County, Montana, in the County of Flathead, State of Montana.

2004233 / 6410

EXHIBIT "B"

to

**Declaration of Covenants, Conditions, Restrictions and
Reciprocal Easements**

Legal Description of Tract 3:

Tract 3 of Certificate of Survey No. 16257, recorded on
August 20, 2004, under Recording No. 200423316370, with the Clerk and
Recorder of Flathead County, Montana, in the County of Flathead, State of Montana.

2004233 16410

EXHIBIT "C"

to

**Declaration of Covenants, Conditions, Restrictions and
Reciprocal Easements**

Legal Description of Tract 1:

Tract 1 of Certificate of Survey No. 16257, recorded on
August 20, 2004, under Recording No. 200423316370, with the Clerk and
Recorder of Flathead County, Montana, in the County of Flathead, State of Montana.

2004233 16410

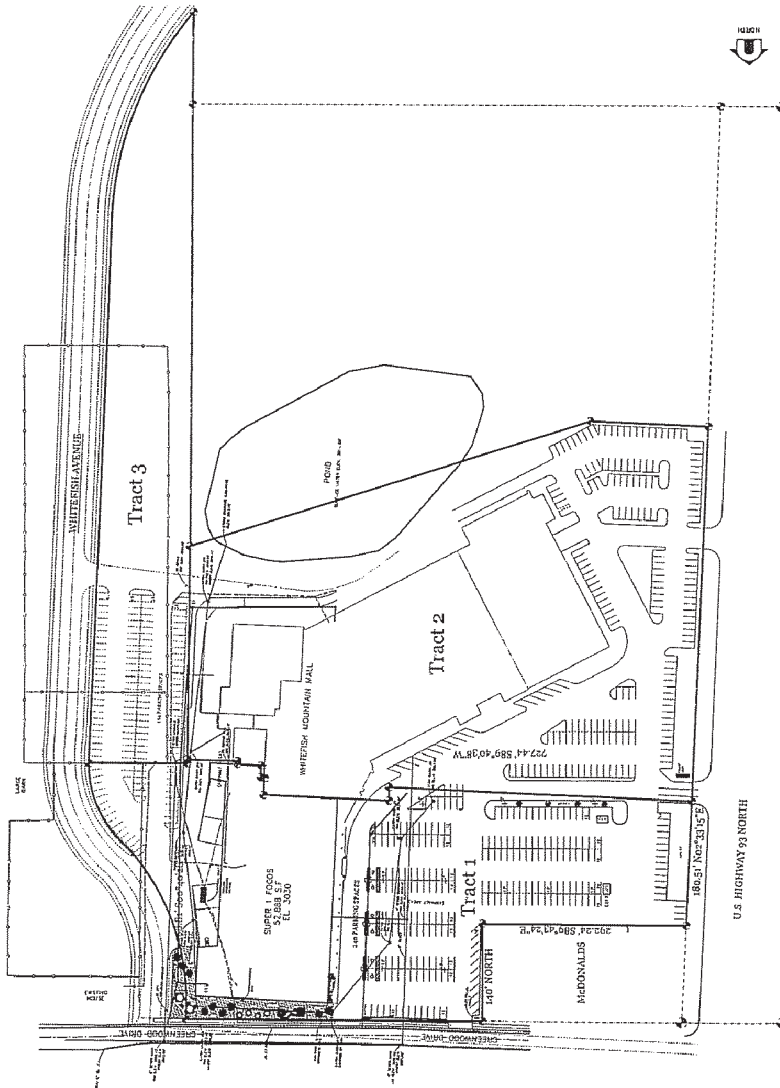
EXHIBIT "D"

to

**Declaration of Covenants, Conditions, Restrictions and
Reciprocal Easements**

The Site Plan is comprised of the page attached hereto and, by this reference, made a part hereof.

2004233 16410



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STATE OF MONTANA

County of Flathead

RECORDED AT THE REQUEST OF STS
THIS 20 DAY OF August, 2004 AT 4:41 O'CLOCK AND
RECORDED IN THE RECORDS OF FLATHEAD COUNTY, STATE OF MONTANA.

FEE \$ 240- PD.
2004233 16410

Paula Robins
(Flathead County Clerk and Recorder)

RECEPTION NO. _____

Himleuky Moe
(Deputy Clerk)

RETURN TO Patrick B. Ceautti Lukins - Annis, P.C.
1600 Washington Trust Financial Center 717 W Spague Ave Spokane, WA 99201-0466

CG-41065

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**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RECIPROCAL EASEMENTS**

This Amendment to Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements (this "Amendment") is by and among THE CARRINGTON COMPANY, a California corporation ("Carrington"), RONALD B. McINTIRE and JOANNE F. McINTIRE, husband and wife, and JOHN C. YOUNG ("the McIntires and Young"), and RIVERS EDGE PROPERTIES, INC., a Montana corporation ("Rivers Edge"), under the following circumstances:

A. By Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements dated as of August 16, 2004, by and between Carrington, McIntires and Young, recorded in the real estate records of Flathead County, Montana, on August 20, 2004, under Reception No. 200423316410 (the "Original Covenants"), Carrington, McIntires and Young imposed certain restrictions regarding the development of their respective properties.

B. Carrington has divided the property that was referred to in the Original Covenants as "Tract 3" into the two parcels, namely Tract 1, Certificate of Survey No. 16666 and Parcel A, Certificate of Survey No. 16666, as described on Exhibits A and B attached hereto and made a part hereof.

C. Carrington has or will in the near future convey Parcel A, Certificate of Survey No. 16666 to Rivers Edge.

D. In connection with Rivers Edge's acquisition of Parcel A, Certificate of Survey No. 16666, the parties have agreed to amend the Original Covenants as set forth herein.

NOW, THEREFORE, for valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, the parties, for themselves and their successors and assigns, agree as follows:

1. Section 3.1(c) of the Original Covenants is hereby deleted in its entirety and the following inserted in lieu thereof:

"(c) No part of the Center other than Tract 2, Certificate of Survey No. 16257 shall be used for conduct of an Exclusive Tract 2 Business Enterprise. The term "Exclusive Tract 2 Business Enterprise" shall mean any video, dvd, or other electronic entertainment media sale or rental business of any size (excluding a business or department of a business owned by the Tract 1 Owner or the principal tenant of the Tract 1 Owner) and,

(i) with respect to Tract 1, Certificate of Survey No. 16257, any business containing more than two thousand five hundred (2,500) square feet of Floor

Return to - Rivers Edge, P.O. Box 29
Stevensville, MT 59870

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Area, including aisle space, which Floor Area is primarily devoted to the retail sale or provision of any one or any combination of the following goods or services: chiropractic care, barber shop, fitness center, salon and spa services, including sale of professional beauty products, tile and marble products, sporting goods and apparel, banking or financial services similar in character to banking (other than automated teller machine services, which are not restricted), video sales or rentals (including tapes, dvd, or other electronic entertainment media) and "dollar only" sales; or,

(ii) with respect to Parcel A, Certificate of Survey No. 16666, any business containing more than four thousand five hundred (4,500) square feet of Floor Area, including aisle space, which Floor Area is primarily devoted to the retail sale or provision of any one of the following goods or services: chiropractic care, barber shop, fitness center, salon and spa services, including sale of professional beauty products, tile and marble products, sporting goods and apparel, banking or financial services similar in character to banking (other than automated teller machine services, which are not restricted), video sales or rentals (including tapes, dvd, or other electronic entertainment media) and "dollar only" sales.

In addition, the term "Exclusive Tract 2 Business Enterprise" shall mean any business containing more than one thousand (1,000) square feet of Floor Area, including aisle space, which Floor Area is primarily devoted to the provision of packaging or shipping services.

2. Rivers Edge shall be permitted to specify the Building Area for Parcel A, Certificate of Survey No. 16666 without obtaining consent from Carrington, the McIntires and Young provided such Building Area is in compliance with applicable zoning laws and regulations.

3. Notwithstanding anything in Section 3.3 of the Original Covenants to the contrary, Carrington shall not expand the existing building on Tract 2, Certificate of Survey No. 16257, onto any portion of Parcel A, Certificate of Survey No. 16666.

4. The portion of Tract 3, Certificate of Survey No. 16257, which is to be paved and striped for parking under Section 8.1 of the Original Covenants shall be solely located on Tract 1, Certificate of Survey No. 16666 and such paving and striping shall be completed by Carrington at its sole cost.

5. Miscellaneous. The undersigned constitute all of the owners of the property that is subject to the Original Covenants. Except as amended above, the Original Covenants shall remain in full force and effect.

DATED as of this 28 day of April, 2005.

2005144 11110

McIntires & Young:

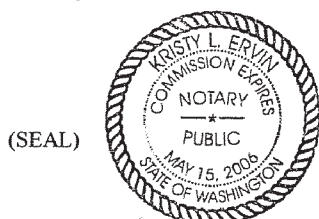
Ronald B. McIntire
RONALD B. McINTIRE

Joanne F. McIntire
JOANNE F. McINTIRE

John C. Young
JOHN C. YOUNG

STATE OF Washington : ss
County of Spokane

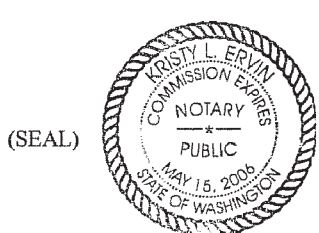
This instrument was acknowledged before me on the 13 day of May, 2005, by RONALD B. McINTIRE and JOANNE F. McINTIRE.



Kristy L. Ervin
Notary Public for the State of Washington
[print or type name of Notary]
Residing at Spokane, WA
My Commission expires May 15, 2005

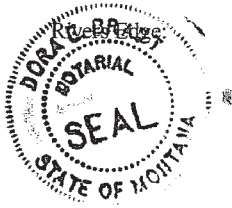
STATE OF Washington : ss
County of Spokane

This instrument was acknowledged before me on the 13 day of May, 2005, by JOHN C. YOUNG.



Kristy L. Ervin
Notary Public for the State of Washington
[print or type name of Notary]
Residing at Spokane, WA
My Commission expires May 15, 2005

2005144 11110



RIVERS EDGE PROPERTIES, INC.

By: Kay Creech
Name: Kay Creech
Title: President / Treasurer

STATE OF Montana)
County of Beaverhead) SS

This instrument was acknowledged before me on the 9th day of May, 2005, by Kay Creech, as President / Treasurer, of RIVERS EDGE PROPERTIES, INC.

Dora E Bradt
Notary Public for the State of Montana
DORA E. BRADT
[print or type name of Notary]
Residing at Stevensville, MT
My Commission expires 7/29, 2007

(SEAL)

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RETURN TO:
RIVER'S EDGE PROPERTIES
PO BOX 29
STEVENSVILLE, MT 59870

2005144 1111D

EXHIBIT "A"

A tract of land, situated, lying, and being in the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 1, Township 30 North, Range 22 West, P.M.,M., and in Government Lot 2 of Section 6, Township 30 North, Range 21 West, P.M.,M., Flathead County, Montana and more particularly described as follows:

Commencing at the NE corner of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana; thence along the North boundary of said SE $\frac{1}{4}$ NE $\frac{1}{4}$,
North 89°47'29" West, a distance of 408.75 feet to a point on the Easterly R/W of a 60 foot road and utility easement; thence along said R/W
South 00°50'18" West, a distance of 58.95 feet to a point; thence leaving said R/W
South 00°01'22" East, a distance of 311.06 feet to a point and the True Point of Beginning of the tract of land herein described; thence
South 89°47'11" East, a distance of 72.50 feet to a point on the Westerly R/W of said 60 foot road and utility easement which is on a 270.00 foot radius curve, concave Southwesterly (radial bearing South 79°59'34" West); thence Southeasterly along said curve through a central angle of 10°00'26" an arc length of 47.16 feet to a point; thence
South a distance of 351.96 feet to a point; thence leaving said R/W
North 89°47'11" West, a distance of 143.10 feet to a point; thence
North 00°41'45" East, a distance of 88.84 feet to a point; thence
North 00°39'14" East, a distance of 304.73 feet; thence
North 00°40'26" East, a distance of 5.31 feet to a point; thence
South 89°47'11" East, a distance of 61.87 feet to the Point of Beginning.

Shown as Tract 1 of Certificate of Survey No. 16666.

2005144 11110

EXHIBIT "B"

A tract of land, situated, lying and being in the Southeast Quarter of the Northeast Quarter (SE¼NE¼) of Section 1, Township 30 North, Range 22 West, P.M.,M. Flathead County, Montana and more particularly described as follows:

Commencing at the NE corner of the SE¼NE¼ of Section 1, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana; thence along the North boundary of said SE¼NE¼, North 89°47'29" West, a distance of 408.75 feet to a point on the Easterly R/W of a 60 foot road and utility easement; thence along said R/W South 00°50'18" West, a distance of 58.95 feet to a point; thence leaving said R/W South 00°01'22" East, a distance of 311.06 feet to a point; thence South 89°47'11" East, a distance of 72.50 feet to a point on the Westerly R/W of said 60 foot road and utility easement which is on 270.00 foot radius curve, concave Southwesterly (radial bearing South 79°59'34" West); thence Southeasterly along said curve through a central angle of 10°00'26" an arc length of 47.16 feet to a point; thence South a distance of 351.96 feet to a point and the True Point of Beginning of the tract of land herein described; thence continuing South a distance of 45.97 feet to a point and P.C. of a distance of 470.00 foot radius curve, concave Northwesterly, having a central angle of 28°00'00"; thence along an arc length of 229.69 feet to a point;; thence South 28°00'00" West, a distance of 94.60 feet to a point and the P.C. of a 430.00 foot radius curve, concave Southeasterly, having a central angle of 27°18'19"; thence along an arc length of 204.92 feet to a point; thence leaving said North 00°41'41" East, a distance of 344.54 feet to a point; thence North 00°41'45" East, a distance of 202.84 feet to a point; thence South 89°47'11" East a distance of 143.10 feet to the Point of Beginning.

Shown as Parcel A of Certificate of Survey No. 16666.

Return To:
RIVERS EDGE
PO BOX 29
Stevensville, MT 59870

STATE OF MONTANA (COUNTY OF FLATHEAD)SS
RECORDED IN THE RECORDS OF FLATHEAD COUNTY, STATE OF MONTANA
AT THE REQUEST OF: STS
5-24 2005 11:11 a'clock \$ 420.00 PAID
PAULA ROBINSON, CLERK AND RECORDED BY
Michele G... DEPUTY
RETURN
DOCUMENT#

2005144 11110

Ret: Sands Surv.
2 Village Loop
Kal, MT 59901

2005322 12220

RECORDED BY Sands
DATE 11-18-05 TIME 12:22
\$ 181 PAGES 23 BY Jo
PAULA ROBINSON FLATHEAD COUNTY
CLERK AND RECORDER ✓

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

S

RIVERS EDGE AT WHITEFISH

ARTICLE I. DECLARATION - PURPOSES

Section 1.1 Property: The initial property which is subject to this Declaration of Covenants, Conditions and Restrictions of Rivers Edge at Whitefish (this "Declaration") is described on Exhibit A, attached hereto. This property is owned by RIVERS EDGE PROPERTIES, INC., a Montana corporation ("Declarant"). Declarant may add additional property to this Declaration from time to time.

Section 1.2 General Purpose: The purpose of this Declaration is to insure the best use of the property and the most appropriate development and improvement of each Lot within the property; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of their Lot; to preserve so far as is practicable the natural beauty of the property; to prevent the construction of inappropriate structures; to insure the highest and best development of the property; to encourage and secure the building of attractive homes thereon with appropriate locations; to secure and maintain adequate setbacks and adequate open space between structures; and in general to provide adequately for a high quality of improvements on the property and thereby to enhance the values of improvements made by Owners.

Section 1.3 Declaration: To further the general purposes herein expressed, Declarant, for itself and its successors and assigns, does hereby declare that the real property described on Exhibit A attached hereto, and all property added to this Declaration by Declarant, shall at all times be owned, held, used and occupied subject to the covenants, conditions and restrictions contained in this Declaration.

ARTICLE II. DEFINITIONS

Section 2. 1 Architectural Review Committee: The committee appointed by Declarant or the Board of Directors as provided in Section 8.2, below, to review improvements to the property as provided in Article VIII, below.

Section 2.2 Articles of Incorporation: Articles of Incorporation shall mean the Articles of Incorporation of Rivers Edge at Whitefish Homeowners Association, Inc., as the same may be amended from time to time.

Section 2.3 Bylaws: Bylaws shall mean the Bylaws of Rivers Edge at Whitefish Homeowners Association, Inc., as the same may be amended from time to time.

Section 2.4 Common Area: Common Area means the property which is subject to this Declaration, but excluding the individual Lots within the property. Thus, the Common Area includes the areas shown on a plat as common areas, park areas, roads (except for Whitefish

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Avenue, which is a public road, dedicated to the City of Whitefish), sidewalks, paths, curbs, gutters, boulevard areas, and other property intended for the common use, benefit and enjoyment of the Owners and such other persons as may be permitted to use the Common Area under the terms of this Declaration or any contract with the Homeowners Association.

Section 2.5 Common Expenses: Common Expenses means (i) all expenses incurred by the Homeowners Association in administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Area and any improvements located on it, (ii) premiums for the liability insurance carried by the Homeowners Association; (iii) all expenses incurred by the Homeowners Association in administering and managing the Homeowners Association; (iv) all expenses incurred by the Homeowners Association in any other activities undertaken for the common benefit of all or some of the Owners; and (v) all expenses lawfully determined to be Common Expenses by the Board of Directors of the Homeowners Association, as provided in the Articles and Bylaws.

Section 2.6 Common Grinder Pump System: Common Grinder Pump System shall mean the portion of the various common sanitary sewer collection and pumping systems installed to serve the Patio Home Lots, including the collection tanks (wherever located), the grinder pumps and the piping from the collection tanks to the common sewer lines, and all associated pipes, fixtures, electronics, alarm systems and other equipment. The Common Grinder Pump System shall not include the portion of the individual sewer line running from an individual residence where the individual sewer line is located within the Patio Home Lot to the edge of the Patio Home Lot. The portion of the individual sewer line located within the Common Area shall be considered to be part of the Common Grinder Pump System. The Common Grinder Pump System shall not include the individual collection tank, pump and related equipment that serves any of the Riverfront Lots.

Section 2.7 Declarant: Declarant shall mean RIVERS EDGE PROPERTIES, INC., a Montana corporation. Declarant may assign its rights as Declarant to a third party purchaser of the property only by a written instrument recorded in the records of Flathead County, Montana specifically stating that Declarant's rights as Declarant under this Declaration are assigned to the third party purchaser. Such instrument may specify the extent and portion of the rights or interests as a Declarant which are being assigned, in which case the initial Declarant shall retain all other rights as Declarant.

Section 2.8 Declaration: Declaration shall mean this Declaration of Covenants, Conditions and Restrictions of Rivers Edge at Whitefish, as it may be amended from time to time.

Section 2.9 Rivers Edge at Whitefish: Rivers Edge at Whitefish shall mean all of the real property located in Flathead County, Montana, described in Exhibit "A" attached hereto, as well as any real property which may in the future become part of Rivers Edge at Whitefish as provided in this Declaration.

Section 2.10 First Mortgage: First Mortgage means any mortgage, deed of trust, trust indenture, contract for deed, or other similar financial encumbrance granted by an Owner to secure a debt, which is recorded in the office of the Clerk and Recorder of Flathead County,

Montana, which encumbers a Lot, and which is first in priority among all such mortgages, deeds of trust, trust indentures or other similar financial encumbrances. There can only be one First Mortgage with respect to a Lot.

Section 2.11 Homeowners Association: Homeowners Association shall mean Rivers Edge at Whitefish Homeowners Association, Inc., and its successors and assigns.

Section 2.12 Lot: Lot shall mean each parcel of real property within Rivers Edge at Whitefish, which is designated as a Lot on a plat of the property, including any such parcel owned by Declarant. The boundaries and acreage of each Lot are delineated on the plat, and each Lot is identified by the number noted on the plat. The roads, parks and common areas shown on any plat are not considered Lots. Any parcel of property owned, held or used by the Homeowners Association or owned, held or used in common by the Owners shall not be considered a Lot. The term "Lot" shall include all Patio Home Lots and all Riverfront Lots.

Section 2.13 Owner: Owner shall mean the person or persons, entity or entities who own of record, according to the real property records of Flathead County, Montana, fee simple title to a Lot, except that a person purchasing a Lot under a contract for deed which is recorded (or an abstract of which is recorded) in the records of Flathead County, Montana, shall not be considered the Owner of the Lot. The term "Owner" shall include Declarant to the extent it is the owner of fee simple title to a Lot.

Section 2.14 Patio Home Expenses: Expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the landscaping of Patio Home Lots, the exterior of the buildings constructed on the Patio Home Lots, the Common Grinder Pump System serving the Patio Home Lots and other expenses associated solely with maintenance of the Patio Home Lots, to be funded through Patio Home Assessments, as provided below.

Section 2.15 Patio Home Lots: Patio Home Lots shall mean the Lots numbered 1-36, inclusive, of Rivers Edge at Whitefish.

Section 2.16 Period of Declarant Control: Period of Declarant Control shall mean the period beginning on the date this Declaration is first recorded in the office of the Clerk and Recorder of Flathead County, Montana, and ending on the earlier of: (a) the date which is 20 years later, or (b) the date on which Declarant has sold 90% of the Lots within Rivers Edge at Whitefish (including all phases) and Declarant has notified the Homeowners Association in writing that Declarant has determined that no additional property shall be added to Rivers Edge at Whitefish. The Period of Declarant Control may be reinstated or extended by agreement between Declarant and the Homeowners Association upon such terms and conditions as the parties may agree. After the termination of the Period of Declarant Control, Declarant, if still an Owner, will continue to have all the rights and duties ordinarily given to Owners under this Declaration.

Section 2.17 Riverfront Lots: Riverfront Lots shall mean the Lots numbered 37-49, inclusive of Rivers Edge at Whitefish.

ARTICLE III. HOMEOWNERS ASSOCIATION

Section 3.1 Rivers Edge at Whitefish Homeowners Association: Rivers Edge at Whitefish Homeowners Association, Inc. shall act as a homeowners association for Rivers Edge at Whitefish.

Section 3.2 Powers: The Homeowners Association shall have all such powers as permitted by the laws of the State of Montana, provided that the Homeowners Association shall be subject to and abide by the provisions of this Declaration, as the same may be amended from time to time.

Section 3.3 Membership: All Owners of the Lots within Rivers Edge at Whitefish shall be members of Homeowners Association. The Owner of any Lot shall automatically become a member of the Homeowners Association and shall remain a member until such time as the ownership of such Lot ceases for any reason, at which time the corresponding membership in the Homeowners Association shall automatically cease.

Section 3.4 Owners' Address: Upon acquiring a Lot, the Owners of the Lot shall immediately inform the Homeowners Association of their names and of one address to which notices from the Homeowners Association should be sent. The Owners shall be responsible for informing the Homeowners Association of any change of address.

Section 3.5 Voting: There shall be one vote for each Lot. If a person or entity owns more than one Lot, that person or entity shall have as many votes as the number of Lots owned by that person or entity. If more than one person or entity has an ownership interest in a single Lot, such persons or entities must decide among themselves how the vote for that Lot shall be cast.

Section 3.6 Management During Period of Declarant Control: During the Period of Declarant Control, Declarant may appoint, remove and replace from time to time any or all of the directors and officers of the Homeowners Association. If Declarant so elects, Declarant may from time to time relinquish, either on a temporary or permanent basis, the right to appoint all or a portion of the directors and officers of the Homeowners Association; provided that any such relinquishment shall be expressed in writing to the Homeowners Association.

Section 3.7 Management After Period of Declarant Control: After the Period of Declarant Control, or at such time as Declarant relinquishes the right to appoint all of the directors or officers of the Homeowners Association pursuant to Section 3.6, the Board of Directors shall include at least one Owner of a Patio Home Lot and at least one Owner of a Riverfront Lot. Decisions concerning the maintenance, repair and other activities related to the Patio Home Lots which would result in Patio Home Assessments and what Patio Home Assessments should be levied and collected shall require the affirmative vote of at least one member of the Board of Directors who is an Owner of a Patio Home Lot. All other decisions of the Board of Directors shall require the affirmative vote of at least one member of the Board of Directors who is an Owner of a Patio Home Lot and at least one member of the Board of Directors who is an Owner of a Riverfront Lot.

ARTICLE IV. COMMON AREA

Section 4.1 Common Area: The Homeowners Association shall have jurisdiction and control over the Common Areas.

Section 4.2 Easement over all Common Areas: The Owners are granted and shall have a non-exclusive easement for use and enjoyment of all of the Common Areas, subject to such rules and regulations as the Homeowners Association may develop from time to time, and also subject to the rights reserved to Declarant and the reserved rights of any third parties with respect to the Common Area.

Section 4.3 Retained Easement by Declarant: Declarant reserves and shall have an easement over all of the Common Area for ingress, egress and utilities. Declarant may permit others to use the Common Areas and grant further easements to others for use of the Common Areas.

Section 4.4 Road Maintenance: The interior subdivision roads within Rivers Edge at Whitefish shall be maintained, repaired and replaced by the Homeowners Association, including plowing of snow. The roads shall be open for perpetual public use. The roads shall be maintained in good condition to allow year-around access to all Lots. No gates, other impediments, or signage may be placed on any roads. The Homeowners Association may elect to landscape and/or maintain portions of road right-of-way not actually used for road purposes. The Homeowners Association may take such action as it deems appropriate to maintain the private character of the roads and to discourage usage of the roads by persons other than Owners and their guests and invitees, or others who are authorized to use the roads to the extent permitted by the City of Whitefish.

Section 4.5 Trail: Simultaneous with the filing of the plat of Rivers Edge at Whitefish and the recording of this Declaration, Declarant is granting to the City of Whitefish a Trail Easement for a public bicycle/pedestrian trail and park area along the bank of the Whitefish River. The Trail Easement is located in the Common Area and the rights of the Owners and the Homeowners Association as to the Common Area are subject to the rights of the City of Whitefish under the Trail Easement. The Trail Easement runs from a point five (5) feet west of the asphalt trail constructed or to be constructed by Declarant along the bank of the Whitefish River to the high water mark of Whitefish River. The Trail Easement also includes an access to the trail and park area from Whitefish Avenue across a specified access route. The Trail Easement permits construction by the City of Whitefish of a bicycle/pedestrian bridge across the Whitefish River. The City of Whitefish will maintain the bicycle/pedestrian trail within in the Trail Easement (including compliance with American With Disabilities Act). If the Trail Easement is abandoned in whole or in part by action of the City Council of the City of Whitefish, the rights which are so abandoned shall revert to the Homeowners Association and become Common Area under this Declaration. The area of the Trail Easement that is not improved with the bike and pedestrian path shall be left in a natural condition. Vegetation and tree limbs within the Trail Easement shall not be removed.

Section 4.6 Property Taxes: It is acknowledged that, for property tax purposes, Flathead County and the State of Montana may allocate to each Lot a fractional, proportional share of the

value attributable to the Common Areas. By accepting a deed to a Lot, the Owner agrees to this mechanism for property taxation and agrees to pay a proportional share (as allocated by Flathead County and the State of Montana) of the taxes attributable to the value of the Common Areas, while at the same time allowing the Homeowners Association to administer and control the Common Areas.

Section 4.7 No Dedication to the Public: Nothing in this Declaration will be construed as a dedication to public use, or a grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any Common Area by such authority or utility, absent an express written agreement to that effect.

Section 4.8 Approval of Declarant: During the Period of Declarant Control, no construction of improvements shall take place within the Common Area nor shall any other changes or alterations shall be made to the Common Area or the uses within the Common Area without the prior written consent of Declarant.

ARTICLE V. COMMON GRINDER PUMP SYSTEM

Section 5.1 Common Grinder Pump System: Each Patio Home Lot shall be served by the Common Grinder Pump System owned and operated by the Homeowners Association. Each residence constructed on a Patio Home Lot will connect to one of the common collection tanks in the Common Grinder Pump System. Each Riverfront Lot will be served by an individual collection tank pump and related equipment to pump sewage to the common sewer lines and shall not be served by the Common Grinder Pump System. The Riverfront Lots are not subject to the terms and conditions of this Article V.

Section 5.2 Initial Construction: Declarant shall be responsible for the initial installation and construction of the Common Grinder Pump System to serve the Patio Home Lots. Each Owner shall be responsible for the initial installation and construction of all piping needed to convey sewage from the residence on the Patio Home Lot in question to the common collection tank that serves that Patio Home Lot. If such piping crosses the Common Area, the Owner shall have an easement over, across and under for installation, maintenance and repair of the piping.

Section 5.3 Maintenance and Operation: (a) On completion, the Common Grinder Pump System will be owned, operated, repaired, maintained, and replaced by the Homeowners Association. The costs for such maintenance shall be included in Patio Home Assessments and paid for by Patio Home Lot Owners. The Common Grinder Pump System shall be operated in conformance with the applicable statutes, laws, rules and regulations of governmental bodies or agencies having jurisdiction or control over the Common Grinder Pump System.

(b) Each Owner of a Patio Home Lot shall be responsible for the operation, repair, maintenance and replacement of all sewer facilities located within the residence on that Owner's Patio Home Lot and the piping running from the residence to the common collection tank that serves that Patio Home Lot. Each Owner of a Patio Home Lot agrees to install, operate, repair, maintain and replace the sewer facilities for which the Owner is responsible in such a manner as to cause no injury to other property or the overall Common Grinder Pump System, and to be in compliance with any rules and regulations adopted by the Homeowners Association concerning

the Common Grinder Pump System. Each Owner shall be responsible for all costs of any maintenance, repair or replacement caused by the negligence or intentional act or omission caused by the Owner or the Owner's family, guests, or invitees.

Section 5.4 No Warranty by Declarant: Declarant makes no warranty with respect to the design or construction of the Common Grinder Pump System. Declarant shall engage engineers, contractors and suppliers ("Third-party Providers") for the design and construction of the Common Grinder Pump System who will provide at least a one year limited warranty with respect to the work performed or equipment provided. Declarant hereby assigns such warranty rights to the Homeowners Association. Declarant shall have no further obligations to the Homeowners Association or to any Owner as to the design or construction of the Common Grinder Pump System, or to remedy any defects in the Common Grinder Pump System. THE LIMITED WARRANTY FROM THIRD-PARTY PROVIDERS IS IN LIEU OF AND REPLACES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE FROM DECLARANT, AND DECLARANT MAKES NO IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR EXPRESS OR IMPLIED WARRANTY OF ANY KIND CONCERNING THE COMMON GRINDER PUMP SYSTEM. The Homeowners Association and all Owners shall look solely to the Third-party Providers to remedy any defects in the Common Grinder Pump System.

Section 5.5 Dedication of Common Grinder Pump System. The Homeowners Association, acting through the Board of Directors, shall have the power to dedicate or transfer all or any part of the Common Grinder Pump System to any sewer district, municipality, public agency, authority or utility authorized to operate a sewer system, subject to such conditions as may be agreed to by the Homeowners Association.

ARTICLE VI. ASSESSMENTS

Section 6.1 Assessments: Declarant, for each Lot owned by Declarant, hereby covenants and agrees, and each Owner of any Lot, by acceptance of the deed to a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Homeowners Association assessments for Common Expenses as provided herein, including Annual Assessments, Special Assessments, Patio Home Assessments and Default Assessments (collectively "Assessments"). The Assessments shall be used exclusively to promote the recreation, health, safety, and general welfare of the Owners and occupants of Rivers Edge at Whitefish.

Section 6.2 Initial Contribution: In addition to the Assessments provided herein, upon the initial sale of a Patio Home Lot from Declarant to a third party, the purchaser shall pay the sum of \$_____ per Patio Home Lot as an initial contribution to the working capital of the Homeowners Association. Upon the initial sale of a Riverfront Lot from Declarant to a third party, the purchaser shall pay the sum of \$_____ per Riverfront Lot as an initial capital contribution to the working capital of the Homeowners Association. Such payment shall not be considered an advance payment of the Annual Assessment and shall not be refundable upon resale of the Lot.

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Section 6.3 Annual Assessment (a) The Board of Directors may levy upon and subsequently collect from each Owner an Annual Assessment for each Lot. The Annual Assessment shall reflect the Board's estimate of the requirements of the Homeowners Association to cover items including, without limitation, the cost of maintenance, repair and operation of the Common Area, including roads; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Homeowners Association; snow removal, landscaping, care of grounds and common lighting within the Common Area; routine renovations within the Common Area; common water and utility charges for the Common Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Homeowners Association under or by reason of this Declaration; payment of any deficit remaining from a previous Assessment period; and the creation or supplementing of a reserve fund for general, routine maintenance, repairs and replacement of improvements within the Common Area on a periodic basis, as needed.

(b) The Annual Assessment shall be equal for each Lot, unless the Board of Directors determines in good faith that a portion of the Annual Assessment benefits fewer than all the Lots, in which case such portion shall be assessed only against the benefited Lots.

(c) Payment of the Annual Assessment shall be due and payable either annually or in installments, as the Board of Directors may provide.

Section 6.4 Special Assessment: (a) The Board of Directors may, from time to time, levy upon and subsequently collect from each Owner a Special Assessment for each Lot.

(b) Any Special Assessment shall be equal for each Lot, unless the Board of Directors determines in good faith that all or a portion of the Special Assessment benefits fewer than all the Lots, in which case all or such portion shall be assessed only against the benefited Lots.

(c) Payment of the Special Assessment shall be due and payable as the Board of Directors may provide.

Section 6.5 Patio Home Assessment: (a) The Board of Directors may levy upon and subsequently collect from each Owner of a Patio Home Lot a Patio Home Assessment for each Patio Home Lot to cover Patio Home Expenses. The Patio Home Assessment shall reflect the Board's estimate of the requirements of the Homeowners Association to cover Patio Home Expenses including, without limitation, (i) the cost of maintenance, repair and replacement of the lawn areas, landscaping, sidewalks, driveways and similar areas within the Patio Home Lots and within those portions of the Common Area which are in the immediate vicinity of the Patio Home Lots, including the Common Area between Patio Home Lots, (ii) the cost of maintenance, repair and replacement of the exterior of the residences built on the Patio Home Lots, including all siding, brick, stone or other exterior finish, roof, exterior doors and windows, gutters and downspouts, and other exterior improvements permitted pursuant to this Declaration, (iii) the cost of maintenance, repair and replacement of the Common Grinder Pump System serving the Patio Home Lots, and (iv) other costs and expenses associated with the Patio Home Lots.

(b) The Patio Home Assessment shall be equal for each Patio Home Lot, unless the Board of Directors determines in good faith that a portion of the Patio Home Expenses benefit fewer

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than all the Patio Home Lots, in which case such portion shall be assessed only against the benefited Patio Home Lots. In general, the cost of maintaining the exterior of a residence on a particular Patio Home Lot shall be considered to benefit only that Patio Home Lot, so such expense shall be assessed only to that Patio Home Lot.

(c) Payment of the Patio Home Assessment shall be due and payable either annually or in installments, as the Board of Directors may provide.

Section 6.6 Default Assessment: (a) Any cost or expense (including attorneys fees) incurred by the Homeowners Association as a result of the failure of an Owner to abide by the provisions of this Declaration, or any expense of the Homeowners Association which is the obligation of an Owner or which is incurred by the Homeowners Association on behalf of the Owner pursuant to this Declaration, or any interest, late charge or other monetary obligation of an Owner under this Declaration (other than Annual, Special or Patio Home Assessments) constitutes a Default Assessment. If an Owner or a resident or guest of an Owner should cause damage to the Common Area or any property or improvement for which the Homeowners Association is responsible for maintenance, repair or restoration of such property or improvement, the Owner shall pay for the cost of repair or restoration of the damage caused. If such payment is not made within thirty (30) days of billing for such cost, a Default Assessment may be levied against the Owner's Lot for such costs.

(b) Default Assessments are levied against the Lot or Lots of an Owner who incurs a Default Assessment.

(c) Default Assessments shall be immediately due and payable by the Owner, upon notice from the Homeowners Association of the amount of the Default Assessment.

Section 6.7 Remedies for Nonpayment of Assessment: Any installment of an Assessment which is not paid within thirty (30) days after its due date will be delinquent. In the event of such delinquency, the Homeowners Association may take any or all of the following actions:

(a) Assess a reasonable late charge for each delinquency at uniform rates set by the Board of Directors from time to time;

(b) Charge interest from the date of delinquency at uniform rates set by the Board of Directors from time to time, not to exceed the maximum rate of interest permitted by law;

(c) Suspend the voting rights of the Owner during any period of delinquency;

(d) Accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year will be due and payable at once;

(e) Bring an action against any Owner personally obligated to pay the delinquent Assessment charges;

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(f) File a statement of lien with respect to the Lot and foreclose as set forth in more detail below.

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

Section 6.8 Assessment Lien: Any Assessment chargeable to a Lot will constitute a lien on the Lot, effective the due date of the Assessment. If the Assessment is not paid within thirty (30) days of its due date, the Homeowners Association may prepare and record a written lien statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Homeowners Association, and the delinquent Assessments amounts then owing. Any such statement will be signed by an officer or director of the Homeowners Association, and will be served upon the Owner of the Lot by mail to the address that the Homeowners Association has in its records for the Owner. Thirty (30) days following the mailing of such notice to the Owner, the Homeowners Association may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Montana. The Homeowners Association will have the power to bid on a Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot.

Section 6.9 Liability for Assessment: All Owners of a Lot are personally responsible, jointly and severally, for all Assessments which become due at the time of their ownership, including interest, late charges, costs, expenses and attorney's fees incurred in collection of such Assessments. All successors to the fee simple title of a Lot, except as provided in Section 6.10 and Section 6.11, will be jointly and severally liable with the prior Owner or Owners for any and all unpaid Assessments, including interest, late charges, costs, expenses and attorney's fees incurred in collection of such Assessments. However, any successor will be entitled to rely on the statement of status of Assessments given by the Homeowners Association under Section 6.12.

Section 6.10 Priority of Lien for Assessment: The lien of the Assessments will be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Montana, and to all other liens and encumbrances except the following:

(a) Liens and encumbrances recorded before the date of the recording of this Declaration;

(b) Liens for real estate taxes and other governmental assessments or charges duly imposed against the Lot by a Montana governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

(c) The lien for all sums unpaid on a First Mortgage recorded before the date of filing of a written lien statement for delinquent Assessments, including any and all advances made by the First Mortgagee, even though some or all of such advances may have been made subsequent to the date of filing of a written lien statement for delinquent Assessments. Any First Mortgagee who acquires title to a Lot by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Lot free of any claims for unpaid Assessments, interest, late charges,

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costs, expenses, and attorney's fees against the Lot which accrue prior to the time such First Mortgagee or purchaser acquires title to the Lot.

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

Section 6.11 Protection of First Mortgage: No violation or breach of, or failure to comply with, any provision contained in this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any First Mortgage on any Lot taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of Flathead County, Montana, prior to the time of recording in said office of an instrument describing such Lot and listing the name or names of the Owner or Owners and giving notice of such violation, breach or failure to comply. No violation, breach, failure to comply or action to enforce this Declaration shall affect, defeat, render invalid or impair the title or interest of the holder of any First Mortgage or the title or interest acquired by any purchaser upon foreclosure of any First Mortgage or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser upon foreclosure shall, however, take subject to this Declaration.

Section 6.12 Statement of Status of Assessments: On written request, the Homeowners Association will furnish to an Owner or his designee or to any mortgagee a statement setting forth the amount of unpaid Assessments then levied against the Lot in which the Owner, designee or mortgagee has an interest. The information contained in such statement, when signed by an officer or director of the Homeowners Association, will be conclusive upon the Homeowners Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith.

Section 6.13 Declarant's Responsibility for Assessments: Notwithstanding the foregoing, Declarant, although a member of the Homeowners Association, shall not be responsible at any time for payment of any of the Assessments. Declarant, however, shall at all times pay all expenses of maintaining the Lots that it owns, including any improvements located thereon, together with a proportionate share of all current expenses of administration actually incurred by the Homeowners Association from time to time, except expenses related to maintenance and use of the Lots and of the dwellings and other improvements constructed within or appurtenant to the Lots that are not owned by Declarant. For purposes of the foregoing sentence, Declarant's proportionate share of such expenses shall be based upon the ratio of all approved Lots for sale owned by Declarant at the time the expense is incurred to the total number of Lots then in the Project. In no event shall Declarant be responsible for payment of the cost of any improvements or other Special Assessments without Declarant's written consent. Further, Declarant shall in no event be liable for any assessment levied in whole or in part to purchase any Lot from Declarant or to finance any litigation or other claim against Declarant, any cost of investigating and preparing such litigation or claim, or similar related costs.

ARTICLE VII. RESTRICTIVE COVENANTS

Section 7.1 Land Use: The property may be used only for single-family residential purposes. There shall be no commercial use on the property. Rentals for a term of one month or more shall not be considered commercial use. Home office or related uses, to the extent permitted by local zoning, which do not result in significant increased vehicular traffic shall not be considered commercial use.

Section 7.2 No Subdivision of Lots: No Lot shall be further subdivided in any manner. A change in boundary lines between adjacent Owners shall not be considered subdivision. Two or more contiguous Lots may be combined to form a smaller number of Lots provided, once combined, such Lots may not be subdivided.

Section 7.3 Structures: There shall be no more than one single family residence and associated outbuildings per Lot. Each residential unit shall include, at a minimum, a two-car attached garage.

Section 7.4 Setbacks and Height:

(a) Setbacks: All residential dwellings must be built within the Lot's building envelope according to the plat registered in Flathead County. Structures located on Patio Home Lots shall be subject to 5-foot setbacks on all sides of the Patio Home Lot. Structures located on Riverfront Lots shall be subject to a 15-foot setback to the front of the Riverfront Lot (20-foot setbacks for homes with garage doors facing the street) (with the front to be considered the west boundary of the Riverfront Lot) and 15-foot setbacks to the rear and 5-foot setbacks to the side. Any requested variances as to setbacks must be approved by the City of Whitefish and the Architectural Review Committee.

(b) Height: The height of structures on the Riverfront Lots (Lots 37-49) shall be measured at the curb line in front of the house and shall be 29-feet maximum. At no time shall the house exceed 39-feet in height as measured from the natural adjacent grade.

Section 7.5 Dwelling Construction: All dwellings shall be constructed on the Lot and no trailer homes, mobile homes, modular homes, or prefabricated homes of any kind or type shall be placed on a Lot. All structures shall be constructed of new materials. However, suitable used materials such as used brick or beams may be utilized, provided that advance approval has been obtained from the Architectural Review Committee. All construction, once begun, shall be completed within twelve (12) months after the start of construction. The dwelling shall not be occupied until such time that the above work is completed and all building debris is removed. There shall be no burying of construction debris on any Lot or the Common Area. If construction activity on any Lot should cause damage to the roads or improvements, the cost or repair shall be solely borne by the Owner of the Lot. All construction shall conform to the Uniform Fire Code and Uniform Building Code. A driveway with gravel and culvert shall be constructed on each Lot prior to site clearing, excavating of a basement, or septic field. The Homeowners Association may adopt rules and regulations governing construction, including trash and debris removal, sanitary facilities, parking areas, restoration of damaged areas, fire protection and other construction activities.

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Section 7.6 Roof Material: Only Class A or B roofing materials, as rated by the National Fire Protection Association, shall be allowed on all structures. Use of wood shakes is discouraged due to their flammability.

Section 7.7 Condition and Reconstruction: Each structure, once constructed on a Lot, shall be kept in the same condition as at the time of its initial construction, excepting normal wear and tear. All structures shall be preserved and of pleasant appearance by maintaining paint, stain or sealer as needed. If any structure is damaged in any way, the Owner shall exercise due diligence to rebuild, repair or restore the structure to its appearance and condition prior to the casualty within nine (9) months of the casualty, except that if a structure is substantially damaged or destroyed, the structure may be removed, provided the entire structure and foundation is removed and the ground is restored to its previous level and replanted within nine (9) months of the casualty.

Section 7.8 No Temporary Structures: No structure of a temporary character, trailer, basement, tent, garage, barn, or other outbuilding shall be used on any Lot at a time as residence, either temporarily or permanently. Provided, however, during construction of a dwelling, construction trailers may be used for purposes of construction.

Section 7.9 Outbuildings: All outbuildings on a Lot shall be constructed in keeping with the construction and architecture of the other buildings located on the Lot and shall be kept and maintained in good condition, repair, and appearance. The Architectural Review Committee must approve the size, location and design of any outbuilding constructed on a Lot.

Section 7.10 Utilities: All utilities shall be placed underground.

Section 7.11 Antennas, Poles, and Other Structures: No antenna, poles, or other structures shall be erected unless approved by the Architectural Review Committee. Any satellite dish receiver must be twenty-four (24) inches or less in diameter and located in the rear of the structure.

Section 7.12 House Numbers: Owners shall maintain house numbers either on the house itself or at the driveway entrance. All house numbers shall be clearly visible from the driveway entrance.

Section 7.13 Fire Clearance Measures: In construction and landscaping of houses, Owners shall create and maintain defensible space/vegetative clearance measures around structures that are in compliance with the Urban Wildfire Interface Standards for the purpose of reducing fire danger.

Section 7.14 Fences: No fence shall be over forty-two (42) inches in height. There shall be no fence forward of the rear of the house. The appearance, height, location and construction materials of all fences must be approved by the Architectural Review Committee.

Section 7.15 Vehicles: All vehicles shall be parked in the garages or driveways and no vehicle shall be parked on the Common Area except on a temporary basis. The parking or

storage of campers, camping trailers, recreational vehicles, pickup campers, trucks over $\frac{3}{4}$ ton, boats, trailers, or unlicensed vehicles is prohibited unless in an enclosed garage or screened from view. No outdoor maintenance, service, rebuilding, dismantling, painting, or repair work shall be performed on any vehicle outside of an enclosed garage, except for washing and polishing. No abandoned or inoperable vehicles shall be parked on any Lot.

Section 7.16 Animals: Dogs (no more than two (2)) or cats (no more than two (2)) or other small household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No livestock or poultry of any kind shall be raised, bred or kept on any Lot. Household pets, such as dogs, must be contained upon the Owner's Lot and such pet may not be permitted to run at large at any time. All pet enclosures must be located in the rear of the house. No dog which barks, whines or and can otherwise be heard on any frequent or continuing basis, shall be kept on any Lot. Owners shall be responsible to clean up after their pets. Pets constituting a nuisance may be ordered by the Board to be kept within the residence of the Owner or ordered expelled from the property.

Section 7.17 Wildlife: Feeding deer or other wildlife is discouraged, as it will attract mountain lions and bears and endanger people, property and other wildlife. Owners are encouraged to contact Montana Fish, Wildlife & Parks for stewardship practices as they relate to interactions with wildlife. The Homeowners Association may regulate the feeding of wildlife by rules and regulations.

Section 7.18 Nuisances: No nuisance or unreasonably offensive or noxious activity, including noises (such as those from sound systems, bells, whistles or other sound devices) and activities or objects that create an offensive odor, nor any other use, activity or practice shall be permitted on or within any lot which is the source of significant annoyance or embarrassment to, or which significantly offends or disturbs, residents of Rivers Edge at Whitefish or which materially interferes with the peaceful enjoyment or possession and proper use of any property by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant or its agents, contractors or designees, which are reasonably necessary to the development of and construction in Rivers Edge at Whitefish.

Section 7.19 Garbage and Refuse Disposal: Owners shall arrange for weekly pick-up of garbage by only one private garbage contractor. The Homeowners Association may elect to take over selection of a garbage contractor and may assess each Lot for an equitable share of the cost of garbage collection as a Common Expense. All rubbish, trash, garbage and waste shall be kept in bear-proof garbage receptacles or stored in the garage or residence. All garbage receptacles and the areas in the vicinity of the receptacles shall be kept in clean and sanitary condition. Garbage receptacles shall not be visible from any roads. No disposal of garbage, rubbish, leaves or debris shall be allowed on any vacant Lot or Common Area. No burning or burying of trash will be allowed on any Lot or Common Area.

Section 7.20 Signs: No signs, billboards, banners, or advertising devices of any nature except as may be authorized by the Architectural Review Committee shall be erected or maintained on any part of Rivers Edge at Whitefish, except for a standard size "For Sale" sign placed on a Lot which is for sale. The foregoing restrictions shall not apply to the business activities or advertising of Declarant while any Lots remain unsold.

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Section 7.21 Drainage Control: Reasonable precaution shall be taken during construction and thereafter, to prevent erosion and drainage problems. All disturbed soil areas shall be revegetated within a reasonable time in such a fashion as to minimize erosion. Driveways shall be constructed so as not to interfere with drainage and shall include culverts of appropriate size to prevent obstruction of water flow. During construction, measures must be taken to accommodate any changes in the flow of water, from or through the Lot and onto adjacent Lots, provided that any such measures are approved in advance by the Architectural Review Committee.

Section 7.22 Trees: Because it is desirable to maintain existing trees, there shall be no cutting down of trees which measure at least three (3) inches in diameter, measured one foot above the ground, without prior approval of the Architectural Review Committee.

Section 7.23 Lot Landscaping: Basic landscaping, including finish grading, seeding or sodding, must be completed within one year after date of occupancy. The Owner of each Lot shall develop a landscape plan and shall install initial landscaping which will tend to enhance, complement and harmonize with the adjacent property. After initial installation, the Homeowners Association shall be responsible for maintenance of the landscaping on Patio Home Lots. Each Owner of a Riverfront Lot shall have the responsibility to maintain the grounds of his Riverfront Lot including the mowing of grass, removal of weeds, and proper trimming of bushes and trees. Each Owner is responsible for re-vegetation of disturbed areas on that Owner's Riverfront Lot and for the control and eradication of noxious weeds on that Owner's Riverfront Lot in accordance with the requirements of the Flathead County Weed and Parks Department or successor agency. If the Homeowners Association shall receive complaints from other Owners, then, and in that event, it shall have the right to notify the Owner, and if the Owner does not immediately maintain his Riverfront Lot, the Homeowners Association may have such maintenance of the grounds of the Riverfront Lot performed as the Homeowners Association shall determine as being reasonable, and the charges therefore shall be assessed against the Riverfront Lot as a Default Assessment.

Section 7.24 Homeowner Association Landscape Maintenance: All areas for which the Homeowners Association is responsible for landscaping shall be maintained by the Homeowners Association and shall include mowing, planting, ground cover, bedding, lighting, and irrigation. The Homeowners Association shall be responsible for re-vegetation of disturbed areas in such areas and for the control and eradication of noxious weeds in such areas in accordance with the requirements of the Flathead County Weed and Parks Department or successor agency.

Section 7.25 Firearms and Fireworks: Hunting and target shooting is strictly prohibited within Rivers Edge at Whitefish. No discharge of firearms or fireworks of any kind is permitted in Rivers Edge at Whitefish.

Section 7.26 Driveways: All driveways must be paved, with asphalt, concrete or other surfaces approved by the Architectural Review Committee, from the street pavement to the garage within one year of occupancy. Shared driveways shall be paved to a minimum of twenty (20) feet in width.

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Section 7.27 Fuel Tanks: No fuel tanks above or below the ground are allowed on any occupied Lot.

Section 7.28 Outdoor Lighting: Ground level lighting of patio, deck, driveway and entryway areas on any Lot that do not light areas outside such Lot or create glare are permitted. No other exterior lighting is permitted except as may be authorized by the Architectural Review Committee.

Section 7.29 Wells: Every Lot shall connect onto the City of Whitefish water system. No wells are permitted in Rivers Edge at Whitefish.

Section 7.30 Water Quality: The Homeowner's Association and all Lot Owners shall use reasonable precautions to protect the water quality of Whitefish River and the environment and shall use products that are safe for the environment in all maintenance, landscaping and weed eradication.

ARTICLE VIII. ARCHITECTURAL REVIEW

Section 8.1 Review: In order to maintain harmony of external design and location in relation to surrounding structures, topography and native vegetation and to otherwise assist in achieving the general purposes of this Declaration, the following activities shall be subject to architectural review:

- (a) Site preparation and removal of trees.
- (b) Construction of any dwelling, structure, fence or other improvement on any Lot.
- (c) Exterior modification of any dwelling, structure, fence or other improvement,
- (d) Landscaping and modifications to landscaping.

None of these activities shall be undertaken without prior written approval of the Architectural Review Committee. Alterations or remodeling which are completely within a dwelling or structure and which do not change the exterior appearance of the structure are not subject to architectural review.

Section 8.2 Architectural Review Committee: The Architectural Review Committee shall consist of one or more persons. During the Period of Declarant Control, the members of the Architectural Review Committee shall be appointed by Declarant, and may include Declarant or parties related to Declarant. After the Period of Declarant Control, the members of the Architectural Review Committee shall be appointed by the Board of Directors of the Homeowners Association. The party appointing the members of the Architectural Review Committee may remove any such members and replace any members who are so removed.

Section 8.3 Design of Residences: Declarant shall provide the general design (but not detailed plans) for all residences located on the Patio Home Lots, and all residences located on

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Patio Home Lots shall conform to the general design provided by Declarant. A licensed architect must design or approve the design of all residences on Riverfront Lots.

Section 8.4 Pre-Design Meeting: Prior to the design of any residence on a Lot, the Owner and the Owner's architect shall meet with the Architectural Review Committee to discuss the particular site, the Owner's desires for the residence, how such desires can be met in a manner consistent with the overall plan for Rivers Edge at Whitefish and other matters preliminary to development of a design and plans for the residence.

Section 8.5 Application: When detailed plans have been developed but prior to undertaking any activities that are subject to architectural review, the Owner shall provide the Architectural Review Committee with detailed plans and specifications concerning the proposed improvement, including the following:

(a) Site plan showing the location of house, outbuildings, driveway or other structure proposed to be built or revised. The plan must also show finished grade elevations.

(b) A complete set of building plans including plans for all floors, cross-sections, and elevations showing all dimensions and finished square footage.

(c) Plans shall include exterior colors, materials, and finishes and indicate outdoor lighting. In order to facilitate exterior maintenance of the structures located on Patio Home Lots, all exterior materials to be used in such structures must be chosen from the specific materials (including the specific brand and/or manufacturer of the materials) designated by the Architectural Review Committee.

The Architectural Review Committee may require that the applicant submit additional information or materials reasonably required to perform its review function. In addition, the applicant shall submit the fee for architectural review which shall initially be the sum of \$100.00. The review fee may be revised from time to time by the Architectural Review Committee.

Section 8.6 Action by Committee: Upon receipt of plans and other material, the Architectural Review Committee shall review the proposed improvement to determine whether it is in accordance with the goals stated in Section 8.1 and is otherwise in conformance with this Declaration and any guidelines adopted by the Architectural Review Committee. The Architectural Review Committee may engage outside consultants and other professionals to review submissions, the cost of which shall be borne by the person or entity making the application or request. The Architectural Review Committee shall respond to the proposal in writing, stating its approval or the reasons for its disapproval. The Architectural Review Committee, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. The Architectural Review Committee shall not unreasonably delay in acting upon an application. The Architectural Review Committee may monitor construction to ensure that the approved plans are being followed.

Section 8.7 Approval of Builder: Because of the sensitive nature of the building sites and their proximity to each other, no builder (including an Owner who wishes to act as a builder)

shall be permitted to engage in any construction activities which are required to be approved under this Article unless the builder is approved in writing by the Architectural Review Committee. The Architectural Review Committee may, in its discretion, condition such approval upon the builder providing a bond or security deposit to assure that construction proceeds in accordance with approved plans and in accordance with other provisions of this Article and any guidelines adopted by the Architectural Review Committee.

Section 8.8 Guidelines: The Architectural Review Committee may, but shall not be required to develop guidelines for its architectural review in addition to those set forth in this Declaration.

Section 8.9 Deposit: The Architectural Review Committee may require each Owner to provide a deposit in an amount set by the Architectural Review Committee to ensure that the roads and other common properties and adjacent property are not damaged during construction and that the other provisions of this Declaration and applicable rules and regulations are not violated during construction. If the construction is completed without such damage or violation, the deposit shall be returned to the Owner (without interest). If there has been such damage or violations, the deposit may be applied toward remedying such damage or violations. If the Owner disagrees that such damage or violations have occurred, the Architectural Review Committee shall give the Owner an opportunity to meet with the Architectural Review Committee and provide the Committee with such evidence as the Owner may desire. After considering such evidence, the Architectural Review Committee shall make a determination of whether such damages or violations occurred, including the amount thereof, and the determination of the Architectural Review Committee, made in good faith, shall be final. If the cost of remedying any such damage or violations exceeds the deposit amount, the Owner shall be responsible for any excess costs.

Section 8.10 Liability: Neither Declarant, the Homeowners Association, the Architectural Review Committee nor their respective members, officers, directors, employees or agents shall be responsible or liable for the defects in any plans or specifications submitted, revised or approved under this Article, nor for any defects in construction pursuant to such plans and specifications. The Architectural Review Committee will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Architectural Review Committee nor any individual member of the Architectural Review Committee will be liable to any person for any official act of the Architectural Review Committee in connection with submitted plans and specifications, except to the extent the Architectural Review Committee or any individual member of the Architectural Review Committee acted with malice or harmful intent.

Section 8.11 Other Required Approvals: Compliance with the Rivers Edge at Whitefish design review process is not a substitute for compliance with City of Whitefish building, zoning and other regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. Approval of plans and specifications under this Article does not assure compliance with or approval by the City of Whitefish or other governing bodies of their respective building requirements or regulations.

ARTICLE IX. EXPANSION

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Section 9.1 Declarant May Expand: Declarant reserves the right, but will not be obligated, to expand the effect of this Declaration to include additional property. The consent of the existing Owners, the Homeowners Association or the Board of Directors of the Homeowners Association will not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option.

Section 9.2 Declaration of Annexation: Any expansion may be accomplished by recording a Declaration of Annexation and one or more supplemental plats in the records of the Clerk and Recorder of Flathead County, Montana. The Declaration of Annexation must be signed by Declarant and (if different) the owner of the real property to be annexed. The Declaration of Annexation must describe the real property to be annexed, submitting it to this Declaration. Upon such annexation, each Lot in the annexed property will be allocated one vote and liability for the Common Expenses equal to the liability allocated to each of the other Lots, and the proportionate voting interest and allocation of Common Expenses for the other Lots will be adjusted accordingly. Upon such annexation, each Owner of a Lot in the annexed property shall automatically become a member of the Homeowners Association. Such Declaration of Annexation will not require the consent of Owners, the Homeowners Association, or the Board of Directors of the Homeowners Association. Any such expansion will be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Upon the recordation of any such Declaration of Annexation, the definitions used in this Declaration will be expanded automatically to encompass the annexed property. Such Declaration of Annexation may add supplemental covenants peculiar to the annexed property, or delete or modify provisions of this Declaration as it applies to the annexed property. However, this Declaration may not be modified with respect to that portion of the property already subject to this Declaration, except as provided below for amendment.

ARTICLE X. DURATION AND AMENDMENT

Section 10.1 Duration of Declaration: The provisions of this Declaration are intended to be easements and covenants running with the land, and are intended to be perpetual, except as amended or terminated as provided below. If any provision contained in this Declaration is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation, such provisions shall continue and remain in full force and effect for the maximum period permitted by law, or until the provisions contained in this Declaration are amended or terminated as provided below, whichever first occurs.

Section 10.2 Amendment during Period of Declarant Control: During the Period of Declarant Control, this Declaration may be amended by Declarant as provided in this Section 10.2. Declarant shall prepare the form of amendment. The form of amendment and a notice of the Owners' rights under this Section 10.2 shall be mailed to each Owner by first class mail, postage prepaid, to the address of the Owner on the records of the Homeowners Association. Unless written objection is received by Declarant from the Owners holding eighty percent (80%) or more of the votes within thirty (30) days of the mailing of the notice to the Owners, the action proposed to be taken by Declarant shall be considered approved and shall become final. Declarant shall then record in the records of Flathead County, Montana, a document stating the

2005322 12220

action taken, together with a certificate certifying that notice was given to the Owners as required herein and that fewer than eighty percent (80%) of the Owners objected to the action.

Section 10.3 Amendment after Period of Declarant Control: After the Period of Declarant Control, this Declaration may be amended or repealed as provided in this Section 10.3. Any amendment shall require the consent of the Owners of sixty percent (60%) of the Lots. Such consent may be evidenced by written consent or by vote at a regular or special meeting of the members of the Homeowners Association, or by a combination of written consents and votes.

Section 10.4 Unilateral Amendment by Declarant: At any time, before or after the Period of Declarant Control, so long as Declarant owns a Lot, Declarant may unilaterally amend this Declaration (1) if such amendment is solely to comply with applicable law or correct a technical or typographical error, (2) if such amendment does not adversely alter any substantial rights of any Owner or mortgagee, or (3) in order to meet the guidelines or regulations of a mortgagor or insurer including, but not limited to, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration or any similar agency. Such amendments shall not require approval of any Owners.

ARTICLE XI. MISCELLANEOUS

Section 11.1 Effect of Provisions of Declaration: Each provision contained in this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision contained in this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision contained in this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within Rivers Edge at Whitefish is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within Rivers Edge at Whitefish by an Owner or the Homeowners Association, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner or Homeowners Association, as the case may be, and, as a personal covenant, shall be binding on such Owner or Homeowners Association and such Owner's or Homeowners Association's respective heirs, personal representatives, successors and assigns; (c) shall be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to each parcel of real property within Rivers Edge at Whitefish, including property that may hereafter become part of Rivers Edge at Whitefish; and (d) shall be deemed a covenant, obligation and restriction secured by a lien, binding, burdening and encumbering the title to each parcel of real property within Rivers Edge at Whitefish, which lien with respect to any Lot shall be deemed a lien in favor of Declarant.

Section 11.2 Variances: To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of this Declaration, the Architectural Review Committee shall have the authority to grant reasonable variances from the provisions of this Declaration, and, so long as Declarant owns one or more Lots, Declarant may grant reasonable variances from the provisions of this Declaration. No variance shall materially injure or materially adversely affect any other part of the property or other Owner or occupant. No

variance granted pursuant to the authority of this Section shall constitute a waiver of any provision of this Declaration as applied to any other party or any other part of the property, and no variance may be granted to permit anything that is prohibited by applicable zoning ordinances or similar law. All provisions of this Declaration not affected by the grant of a variance shall continue to apply with full force and effect to the Lot for which the variance is granted and to the balance of the property.

Section 11.3 Enforcement and Remedies: (a) Each provision contained in this Declaration shall be enforceable by the Homeowners Association, the Architectural Review Committee, Declarant (so long as Declarant owns one or more Lots) and/or by any Owner who has first made written demand on the Homeowners Association to enforce such provision and thirty (30) days have lapsed without appropriate action having been taken by the Homeowners Association. Any enforcement action may be by a proceeding against the party or parties violating or attempting to violate any one or more of the provisions of this Declaration. This right of enforcement shall include the right to seek such relief as may be provided at law or in equity, including but not limited to a temporary or permanent injunction to prevent or abate such violation and/or a suit or action to recover damages.

(b) Any action of omission which violates any provisions of this Declaration is declared to be a nuisance. Every remedy allowed by law or in equity against an Owner shall be applicable in case of any such violation and may be exercised by the Homeowners Association, the Architectural Review Committee, Declarant (so long as Declarant owns one or more Lots) and/or any other Owner who has given the notice required above.

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

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

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

Section 11.4 Limited Liability: Neither Declarant, the Homeowners Association, the Architectural Review Committee or, their respective officers, directors, employees or agents

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shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

Section 11.5 Successors and Assigns: Except as otherwise provided herein, the provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Homeowners Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

Section 11.6 Severability: Invalidity or unenforceability of any provision contained in this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

Section 11.7 Captions: The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

Section 11.8 Construction: When necessary for proper construction, the masculine of any word used in any provisions contained in this Declaration shall include the feminine or neuter gender, and the singular the plural, and vice versa.

Section 11.9 Attorneys' Fees: In the event of a dispute arising under any provision contained in this Declaration, the prevailing party shall be entitled to its reasonable costs and attorneys' fees incurred.

DATED this 20 day of July, 2005.

Signature of Declarant:

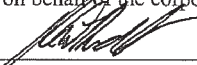
RIVERS EDGE PROPERTIES, INC.

By: Kay Creech
Name: Kay Creech
Title: President

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STATE OF Montana)
) SS:
COUNTY OF Ravalli)

The foregoing instrument was acknowledged before me this 20 day of July 2005, by Kay Creech, President of Rivers Edge Properties, Inc., a Montana corporation, on behalf of the corporation.



Notary Public for the State of Montana
Michael Z. Bradt
[Print or type name of notary]
Residing at Stevensville
My Commission expires 1-29-2006



Return to:
Rivers Edge Properties
PO Box 29
Stevensville, MT 59870
200607916030

By STS
DATE 03-20-06 TIME 4:03
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PAULA ROBINSON FLATHEAD COUNTY MONTANA

**AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Amendment") is made as of this 19 day of March 2006, by RIVERS EDGE PROPERTIES, INC., a Montana corporation ("Declarant"), under the following circumstances:

CR-06-043

A. By Declaration of Covenants, Conditions and Restrictions recorded on November 18, 2005 at Instrument No. 200532212220 of the Flathead County, Montana Records (the "Declaration"), Declarant imposed certain covenants, restrictions and easements on certain real property owned by Declarant located in the City of Whitefish, Flathead County, Montana known as Rivers Edge at Whitefish and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

B. Pursuant to Section 10.2, Declarant has the power to amend the Declaration.

C. As of the day of this Amendment, Declarant owns all of the Lots subject to the Declaration.

D. Declarant desires to amend the Declaration as more particularly described herein.

NOW, THEREFORE, for valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, Declarant amends the Declaration as follows:

1. Section 6.3 shall be deleted in its entirety and the following inserted in lieu thereof:

Section 6.3 Annual Assessment (a) The Board of Directors may levy upon and subsequently collect from each Owner an Annual Assessment for each Lot. The Annual Assessment shall reflect the Board's estimate of the requirements of the Homeowners Association to cover items including, without limitation, the cost of maintenance, repair and operation of the following: Common Area roads and sidewalks; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Homeowners Association; snow removal of streets, driveways, and common area sidewalks of any accumulation greater than 2 inches of snow; landscaping, irrigation systems, and lighting within the Common Area; routine renovations within the Common Area; common water and utility charges for the Common Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Homeowners Association under or by reason of this Declaration; payment of any deficit remaining from a previous Assessment period; and the creation or supplementing of a reserve fund for general, routine

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maintenance, repairs and replacement of improvements within the Common Area on a periodic basis, as needed.

2. Section 6.5 of the Declaration shall be deleted in its entirety and the following inserted in lieu thereof:

Section 6.5 Patio Home Assessment: (a) The Board of Directors may levy upon and subsequently collect from each Owner of a Patio Home Lot a Patio Home Assessment for each Patio Home Lot to cover Patio Home Expenses. The Patio Home Assessment shall reflect the Board's estimate of the requirements of the Homeowners Association to cover normal wear and tear for the following Patio Home Expenses: (i) the cost of maintenance, repair and replacement of the lawn areas and landscaping within the Patio Home Lots and within those portions of the Common Area which are in the immediate vicinity of, and between Patio Home Lots but excluding any damage to these areas from Owners, their pets, or their invitees which shall be repaired at the sole responsibility of the Owner pursuant to Section 6.6 of this Declaration; (ii) the cost of minor maintenance of all siding, brick, stone and other exterior finish, as a result of normal wear and tear to the residences built on the Patio Home Lots solely to insure the aesthetic maintenance of the exterior of each residence homes; such maintenance does not include repairs due to casualty losses required to be covered by a policy of casualty insurance nor does such maintenance include the cost of repairs, replacement and complete restaining/repainting of the exterior of residence which shall be at the expense of the Patio Home Lot Owner, (iii) the cost of maintenance, repair and replacement of the Common Grinder Pump System serving the Patio Home Lots and (iv) other costs and expenses associated with the Patio Home Lots.

3. The following paragraph shall be inserted at the end of Section 7.23:

For all Patio Home Lots, the Homeowners Association is responsible for the cost of design, labor, and materials to install the initial landscaping. Basic landscaping, including finish grading, seeding or sodding, will be completed between June 1 and October 1, following the final completion of the home constructed on a given Lot. A Patio Home Lot Owner shall be permitted to make minor changes to the landscaping subject to review and approval by the Architectural Review Committee. Each Patio Home Owner will be allowed to have, at the expense and maintenance of the Owner, a flower or vegetable garden on their Lot that is consistent with the landscape plan.

4. Section 7.24 of the Declaration shall be deleted in its entirety and the following inserted in lieu thereof:

Section 7.24 Homeowner Association Landscape Maintenance: All areas for which the Homeowners Association is responsible for landscaping shall be maintained by the Homeowners Association and shall include mowing, planting,

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ground cover, lighting, and irrigation. The Homeowners Association shall be responsible for re-vegetation of disturbed areas in such areas and for the control and eradication of noxious weeds in such areas in accordance with the requirements of the Flathead County Weed and Parks Department or successor agency.

5. Except as modified by this Amendment, the Declaration remains in full force and effect.

6. The Declaration, as modified by this Amendment, is ratified and confirmed.

EXECUTED as of the date first written above.

RIVERS EDGE PROPERTIES, INC.

By: [Signature]
Name: Randolph S. Creech
Title: Vice President / Secretary

STATE OF MONTANA)
COUNTY OF Beavert) ss:

The foregoing instrument was acknowledged before me, this 14 day of March 2006, by Randolph S. Creech, Vice President / Sec of Rivers Edge Properties, Inc., a Montana corporation, on behalf of the corporation.



[Signature]
Notary Public for the State of Montana
Dora E. Bradt
[Print or type name of notary]
(SEAL)
Residing at Starnsville
My Commission expires 7/29/2007

This Instrument Prepared by:
Karen R. Adams, Esq.
Chernesky, Heyman & Kress P.L.L.
1100 Courthouse Plaza SW
Dayton, Ohio 45402

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EXHIBIT A

Situate in the City of Whitefish, County of Flathead and being Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49 of Plat of Rivers Edge as recorded in Instrument Record No. 2005.32212200 of the Flathead County Clerk and Recorder Records.

Please Return to:
Rivers Edge Properties
P.O. Box 29
Stevensville, MT
59870



Paula Robinson, Flathead County MT by JS

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Page: 1 of 2
Fees: \$22.00
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Return to:
Rivers Edge Properties, Inc.
PO BOX 29
Stevensville, MT 59870

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

CR-09-12 13
THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS (this "Amendment") is made as of this 27th day
of January, 2009, by RIVERS EDGE PROPERTIES, INC., a Montana corporation
("Declarant"), under the following circumstances:

A. By Declaration of Covenants, Conditions and Restrictions recorded
on November 18, 2005 at Instrument No. 200532212220 of the Flathead County,
Montana Records (the "Declaration"), Declarant imposed certain covenants,
restrictions and easements on certain real property owned by Declarant located in
the City of Whitefish, Flathead County, Montana known as Rivers Edge at
Whitefish (the "Property").

B. By Amendment dated March 14, 2006 and recorded on March,
2006 at Instrument No. 200607916030, of the Flathead County, Montana Records,
Declarant amended the Declaration.

C. Pursuant to Section 10.2, Declarant has the power to amend the
Declaration.

D. Notice was given to the Owners of this Amendment as required in
the Declaration and the undersigned certifies that fewer than eighty percent (80%)
of the Owners objected to the provisions of this Amendment.

E. Declarant desires to amend the Declaration as more particularly
described herein.

NOW, THEREFORE, for valuable consideration paid, the receipt and sufficiency
of which is hereby acknowledged, Declarant amends the Declaration as follows:

1. Section 7.14 of the Declaration shall be deleted in its entirety and the
following inserted in lieu thereof:

Section 7.14 Fences: Except as provided herein, no fence shall be over forty-two
(42) inches in height. At the locations specified herein, fence heights are allowed
up to 72 inches:

Fences to the north of Lots 1, 2, 3, 4, 5, 6, 7 and 49

Fences within 75 feet of the curb of Whitefish Avenue on the north side of
lots 15, 29 and 30.

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Return To: Burnt Fork Ranch
PO Box 29
Stevensville MT 59870

**THIRD AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Amendment") is made as of this 24 day of August, 2011, by RIVERS EDGE PROPERTIES, INC., a Montana corporation ("Declarant"), under the following circumstances:

A. By Declaration of Covenants, Conditions and Restrictions recorded on November 18, 2005 at Instrument No. 200532212220 of the Flathead County, Montana Records (the "Declaration"), Declarant imposed certain covenants, restrictions and easements on certain real property owned by Declarant located in the City of Whitefish, Flathead County, Montana known as Rivers Edge at Whitefish (the "Property").

B. By Amendment dated March 14, 2006 and recorded on March 20, 2006 at Instrument No. 200607916030 of the Flathead County, Montana Records, Declarant amended the Declaration.

C. By Second Amendment dated January 27, 2009 and recorded on February 9, 2009, at Instrument No. 200900003300 of the Flathead County, Montana Records, Declarant amended the Declaration.

D. Pursuant to Section 10.2, Declarant has the power to amend the Declaration.

E. Notice was given to the Owners of this Amendment as required in the Declaration and the undersigned certifies that fewer than eighty percent (80%) of the Owners objected to the provisions of this Amendment.

F. Declarant desires to amend the Declaration as more particularly described herein.

NOW, THEREFORE, for valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, Declarant amends the Declaration as follows:

1. Section 6.1 of the Declaration shall be deleted in its entirety and the following inserted in lieu thereof:

Section 6.1 Assessments: Each Owner of any Lot, by acceptance of the deed to a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Homeowners Association assessments for Common Expenses as provided herein, including Annual Assessments, Special Assessments, Patio Home Assessments and Default Assessments (collectively "Assessments"). The Assessments shall begin accruing upon the conveyance of

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0501226, E001068

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any Lot from the Declarant to an Owner or Builder. The Assessments shall be used exclusively to promote the recreation, health, safety, and general welfare of the Owners and occupants of Rivers Edge at Whitefish.

2. Section 6.2 of the Declaration shall be deleted in its entirety and the following inserted in lieu thereof:

Section 6.2. Intentionally omitted.

3. The Section 7.23 shall be deleted in its entirety and the following inserted in lieu thereof::

Section 7.23 Lot Landscaping: Basic landscaping, including finish grading, seeding or sodding, must be completed within one year after date of occupancy. The Owner of each Lot, or the builder of the residence on each Lot, shall develop a landscape plan and shall install initial landscaping which will tend to enhance, complement and harmonize with the adjacent property. After initial installation, the Homeowners Association shall be responsible for maintenance of the landscaping on Patio Home Lots. Each Patio Home Owner will be allowed to have, at the expense and maintenance of the Owner, a flower or vegetable garden on their Lot that is consistent with the landscape plan.

Each Owner of a Riverfront Lot shall have the responsibility to maintain the grounds of his Riverfront Lot including the mowing of grass, removal of weeds, and proper trimming of bushes and trees. Each Owner is responsible for re-vegetation of disturbed areas on that Owner's Riverfront Lot and for the control and eradication of noxious weeds on that Owner's Riverfront Lot in accordance with the requirements of the Flathead County Weed and Parks Department or successor agency. If the Homeowners Association shall receive complaints from other Owners, then, and in that event, it shall have the right to notify the Owner, and if the Owner does not immediately maintain his Riverfront Lot, the Homeowners Association may have such maintenance of the grounds of the Riverfront Lot performed as the Homeowners Association shall determine as being reasonable, and the charges therefore shall be assessed against the Riverfront Lot as a Default Assessment.

4. Except as modified by this Amendment, the Declaration remains in full force and effect.

5. The Declaration, as modified by this Amendment, is ratified and confirmed.



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Paula Robinson, Flathead County MT by NC

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Page: 1 of 3
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**FOURTH AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Amendment") is made as of this 13th day of January, 2014, by RIVERS EDGE PROPERTIES, INC., a Montana corporation ("Declarant"), under the following circumstances:

A. By Declaration of Covenants, Conditions and Restrictions recorded on November 18, 2005 at Instrument No. 200532212220 of the Flathead County, Montana Records (the "Declaration"), Declarant imposed certain covenants, restrictions and easements on certain real property owned by Declarant located in the City of Whitefish, Flathead County, Montana known as Rivers Edge at Whitefish (the "Property").

B. By Amendment dated March 14, 2006 and recorded on March 20, 2006 at Instrument No. 200607916030 of the Flathead County, Montana Records, Declarant amended the Declaration.

C. By Second Amendment dated January 27, 2009 and recorded on February 9, 2009, at Instrument No. 200900003300 of the Flathead County, Montana Records, Declarant amended the Declaration.

D. By Third Amendment dated August 24, 2011 and recorded on August 31, 2011 at Instrument No. 201100017781 of the Flathead County, Montana Records, Declarant amended the Declaration.

E. Pursuant to Section 10.2, Declarant has the power to amend the Declaration.

E. Notice was given to the Owners of this Amendment as required in the Declaration and the undersigned certifies that fewer than 80% of the Owners objected to the provisions of this Amendment.

F. Declarant desires to amend the Declaration as more particularly described herein.



NOW, THEREFORE, for valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, Declarant amends the Declaration as follows:

1. Section 4.3 of the Declaration is hereby deleted and the following inserted in lieu thereof:

Section 4.3 Retained Easements by Declarant/Encroachments: Declarant reserves and shall have an easement over all of the Common Area for ingress, egress and utilities. Declarant may permit others to use the Common Areas and grant further easements to others for use of the Common Areas. If, by reason of the design or construction of utility systems, any main pipes, ducts or conduits, including, but not limited to the sprinkler system and Common Grinder Pump Systems, serving one Lot or the Common Areas encroach upon any part of any other Lot or the Common Areas, valid easements for the maintenance of such encroachments are established. These easements shall exist for the benefit of the affected Lot(s), the Association and the Common Areas, as the case may be, so long as the encroachments exist.

2. Except as modified by this Amendment, the Declaration remains in full force and effect.


3. The Declaration, as modified by this Amendment, is ratified and confirmed.

[Signature on following page.]



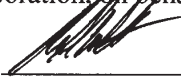
EXECUTED as of the date first written above.

RIVERS EDGE PROPERTIES, INC.

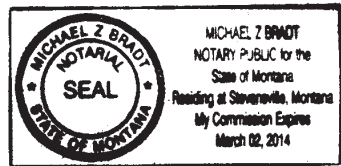
By: 
Name: Randolph S. Creech
Title: Vice Pres

STATE OF MONTANA)
) ss:
COUNTY OF Ravalli)

The foregoing instrument was acknowledged before me this 13 day of January, 2014, by Randolph S. Creech, Vice Pres of Rivers Edge Properties, Inc., a Montana corporation, on behalf of the corporation.


Notary Public for the State of Montana
Michael Z. Bradt
[Print or type name of notary]
(SEAL)
Residing at Stevensville
My Commission expires March 2, 2014

This Instrument Prepared by:
Karen R. Dillon, Esq.
Dinsmore & Shohl LLP
1100 Courthouse Plaza SW
10 N. Ludlow Street
Dayton, Ohio 45402



Rivers Edge PO Box 243 Whitefish, MT 59937



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Debbie Pierson, Flathead County MT by SC

FIFTH AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS

THIS FIFTH AMENDMENT TO DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Amendment") is made this 10 day of August, 2016, by a vote of the homeowners ("Owners") of RIVERS EDGE AT WHITEFISH HOMEOWNERS ASSOCIATION, INC., a Montana corporation ("HOA" or "the HOA"), and successor in interest to RIVERS EDGE PROPERTIES, INC. ("Declarant") under the following circumstances:

A. By Declaration of Covenants, Conditions and Restrictions initially made by Declarant on November 18, 2005, and subsequently amended on March 20, 2006, January 27, 2009, February 9, 2009, and January 13, 2014, Declarant imposed certain covenants, restrictions, and easements on certain real property owned by Declarant located in the City of Whitefish, Flathead County, Montana known as Rivers Edge at Whitefish (the "Property"), and

B. Pursuant to Section 10.2, Owners have the power to amend the Covenants, Conditions, and Restrictions.

C. Notice was given to the Owners as required in the Declaration of Covenants, Conditions, and Restrictions, and the undersigned certifies that more than sixty percent of the Owners consented to the adoption of this Amendment.

D. The HOA desires to amend the Covenants, Conditions, and Restrictions of the Declarant as more particularly described herein.

NOW, THEREFORE, for valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, by a vote of the Owners, the HOA amends the Covenants, Conditions, and Restrictions as follows:

1. The first paragraph of Section 8.5(c) shall be amended by inserting "both the" after the words "structures located on" and by inserting "and River" after the words "Patio Home";

2. The first paragraph of Section 8.5(c) is further amended by adding the following to the end of the paragraph:

"and included in the Architectural Review Committee's General Guidelines for Contractors and Builders. The equivalent of such materials will be acceptable if approved by the Architectural Review Committee."

3. The second sentence of the second paragraph of Section 8.5 shall be revised by deleting the word "initially" and by substituting "\$500.00" for "\$100.00."

4. Except as modified by this Amendment, the Declaration remains in full force and effect.

★ ★ see attached #'s

Notary for Barbara Young Morris President of River's Edge t

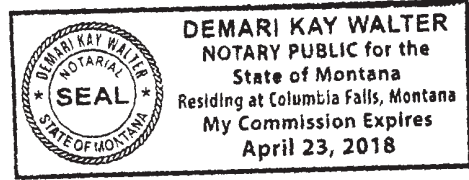
State of Montana

County of Flathead

This instrument was signed or acknowledged before
me on 10/18/16 by Barbara Young Morris
(Name of signer)

Demari Kay Walter
(Notary Signature)

[Affix seal/stamp to the left or below]



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★ ★

**SIXTH AMENDMENT
TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

WHEREAS, the following described real property is subject to the Declaration of Conditions, Covenants and Restrictions recorded in the records of the Clerk and Recorder of Flathead County on November 18, 2005, under Reception Number 200532212220 as amended by those instruments recorded in those same records on March 20, 2006, under Reception Number 200607916030; on February 9, 2009, under Reception Number 200900003300; on August 31, 2011, under Reception Number 201100017781; on January 17, 2014, under Reception Number 201400001108; and on January 20, 2017, under Reception Number 201700001483 (collectively referred to as the "CC&Rs");

Lots 1-49
Rivers Edge Subdivision
according to a map or plat thereof, Flathead County, Montana; and

WHEREAS, Section 10.3 of the CC&Rs provides that the CC&Rs may be amended by a the consent of the Owners of sixty percent (60%) of the Lots as evidenced by a written consent or by a vote at a regular or special meeting of the members of the Rivers Edge at Whitefish Homeowners Association, Inc. ("Homeowners Association"), or by a combination of written consents and votes; and

WHEREAS, the Owners of not less than sixty percent (60%) of the Lots have agreed to amend the CC&Rs by their signatures attached to Exhibit A to this Sixth Amendment to Declaration of Covenants, Conditions, and Restrictions ("6th Amendment");

NOW, THEREFORE:

A. The CC&Rs are amended as follows:

1. Section 6.5 is replaced in its entirety with the following:

Section 6.5 Patio Home Assessment: (a) The Board of Directors may levy upon and subsequently collect from each Owner of a Patio Home Lot a Patio Home Assessment for each Patio Home Lot to cover Patio Home Expenses. The Patio Home Assessment shall reflect the Board's estimate of the requirements of the Homeowners Association to cover normal wear and tear for the following Patio Home Expenses: (i) the cost of maintenance, repair and replacement of the lawn areas and landscaping within the Patio Home Lots and within those portions of the Common Area which are in the immediate vicinity of, and between Patio Home Lots but excluding any damage to these areas from Owners, their pets, or their invitees which shall be repaired at the sole responsibility of the Owner



pursuant to Section 6.6 of this Declaration; (ii) the cost of maintenance, repair and replacement of the Common Grinder Pump System serving the Patio Home Lots and (iii) other costs and expenses associated with the Patio Home Lots. The Homeowners Association is not responsible for repairs due to casualty losses required to be covered by a policy of casualty insurance nor the repair, replacement or restaining/repainting of the exterior of the Patio Home which shall be at the expense of the Patio Home Lot Owner.

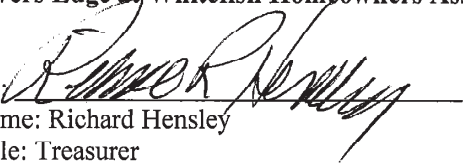
2. Section 7.7 is amended by the addition of the following:

If the Homeowner's Association receives a complaint concerning a non-compliance with this Section 7.7, it may notify the non-complying Owner of the obligation to make repairs, including paint, stain or sealer. If the non-complying Owner does not make said repairs within 30 days, weather permitting, then the Homeowners Association may make such repairs and the charges therefore shall be assessed against the non-complying Owner's Lot as a Default Assessment.

Capitalized terms used but not defined in this Treasurer's Certificate shall have the meanings given to them in the CC&Rs.

IN WITNESS WHEREOF, the Treasurer of the Homeowners Association, has executed this 6th Amendment and hereby certifies, in his capacity as Treasurer of the Association, that this 6th Amendment has been approved and consented to by the requisite number of Owners of Lots within the Rivers Edge Subdivision as of 8/5/, 2021 as evidenced by the Treasurer's Certificate attached hereto as **Exhibit A** including the written consents and approvals attached thereto.

Rivers Edge at Whitefish Homeowners Association, Inc.

By: 
Name: Richard Hensley
Title: Treasurer

STATE OF MONTANA)
):SS
County of Flathead)

This instrument was acknowledged before me on August 5, 2021, by Richard Hensley, as Treasurer of Rivers Edge at Whitefish Homeowners Association, Inc., a Montana non-profit corporation.


Notary Public for the State of Montana

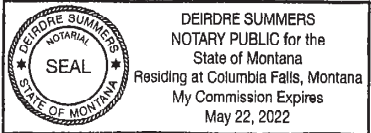




Exhibit A
Treasurer's Certificate

Capitalized terms used but not defined in this Treasurer's Certificate shall have the meanings given to them in the Sixth Amendment to Declarations of Covenants, Conditions, and Restrictions to which this Treasurer's Certificate is attached.

The undersigned, in his capacity as Treasurer of the Homeowners Association, and not in his individual capacity, hereby certifies as follows:

1. The Sixth Amendment has been consented to and approved in writing by at least 60% of the Owners of the Lots contained within the Property; and
2. Attached to this Treasurer's Certificate are true and correct copies of the written consents and approvals with respect to the 6th Amendment received from the Owners.

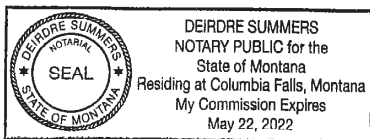
Executed on 8/5/, 2021.

Rivers Edge at Whitefish Homeowners Association, Inc.

By: *Richard R Hensley*
Name: Richard Hensley
Title: Treasurer

STATE OF MONTANA)
 :SS
County of Flathead)

This instrument was acknowledged before me on August 5., 2021, by Richard Hensley, as Treasurer of Rivers Edge at Whitefish Homeowners Association, Inc., a Montana non-profit corporation.



Deirdre Summers
Notary Public for the State of Montana

[Signed Owner Consents and Approvals Follow]



SIXTH AMENDMENT TO THE RIVERS EDGE HOME OWNERS ASSOCIATION DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS

Gary + April Seubert
 Gary Seubert

703 Clearwater Dr
 Lot 14

Name
 Donna M. Bruce

Lot Number
 Lot 4

Name
 Kathy Beshle

Lot Number
 Lot 15

Name
 Charles Riddlehuber

Lot Number 715 Clearwater
 Lot 46

Name
 Wade Tesser

Lot Number
 723 Clearwater

Name
 Michael D. Alomina

Lot Number
 732 CLEARWATER D

Name
 Jerry Maul

Lot Number
 Lot 10 BRIVER HAVEN

Name
 R. D.

Lot Number
 7 Rock Creek Ct

Name
 Douglas Van Koten

Lot Number
 # 35

Name
 Rene Armstrong

Lot Number
 3 Rock Creek

Name
 Bill Bant

Lot Number
 1 SWIFT CREEK W

Name
 Kristin Maroff

Lot Number
 Lot 2 Swift Creek

Name
 Alicia Balliet

Lot Number
 1 Rock Creek Ct

Name
 Molly Kopp

Lot Number
 5 Rock Creek Ct
 Lot Number



Name

Lot number

Name

Lot number

James A. McCall

9

Name

Lot number

William R. Wesley

36

Name

Lot number

John Paul

34

Name

Lot number

John

~~44~~

Name

Lot number

Charles McCort

(725 Clearwater)

Name

Lot number

Robert J. G. Spivey

49

Name

Lot number

x *Jennifer Goss*

38, 39, 40

Name

Lot number

Shonda Maynard

48

Name

Lot number

Charles D. Powell

13

Name

Lot number

Phyllis J. Powell

13

Name

Lot number

Name

Lot number

Name

Lot number

Name

Lot number

Name

Lot number



Zach & Rena Armstrong

Email rarmstrongrn@gmail.com

Notes Lot 31

Rena Armstrong
Billie Bartlett

Billie Bartlett

Email bootjack2@centurytel.net

Kathy & Jerry Bechtle

Email kpbechtle@gmail.com

Kathy Bechtle

Donna Bruner

Email donnabruner4@gmail.com

Donna Bruner

Ricard Carly

Notes Lot 6

Ed Moffatt & Chris Clouse

Email ecmoffatt@gmail.com

Ed Moffatt
Chris Clouse

Jennifer Cross

Email merdie93@gmail.com

Notes Lot 39 & 40

Bill and Necia DeGroot

Email bill.necia@gmail.com
necia.degroot@gmail.com

Bill DeGroot

Russ Devore

Email russ@devorehome.net

Peter & Mary Erenfeld

Email perenfeld@gmail.com

Notes Lot 27

Randy & Patricia Fai



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Email rfai@jmhca.com

Fennelly, Zachary & April

Email zach.fennelly@hotmail.com

Notes Lot 24

Lyles Ferrell

Email felyles.pa@gmail.com

Rick & Colette Gardner

Email colettegardner4@gmail.com

David & Rita Gillund

Email hanna.gillund@gmail.com

Marilyn & Ed Hannigan

Email bigedinidaho@yahoo.com

Richard & Marilyn Hensley



Email rhens3020@aol.com
hensleydick@yahoo.com

Michael & Deborah Holland

Notes Lot 48

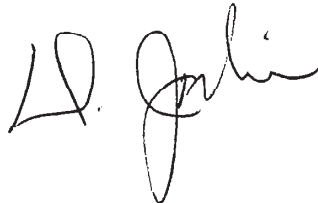
Molly & Tobin Hoppes

Email mollydhoppes@gmail.com



Dave Jochim

Email djoch1121@comcast.net





John Lowell

Email john.lowell@viznenergy.com
cynthiakleinsea@gmail.com

Jerry & Brenda Marks

Email jmarks406@icloud.com

Kristin Marrott

Email kristinmarrott@gmail.com

Linda Maynard

Email ldkuhr@yahoo.com

Joanne McArthur

Email joannemcarthur507@gmail.com

Anne Lent & Charles McCarty

Email cm@alcm.us
al@alcm.us

Bruce & Diane Nakamura

Email dctse88@gmail.com
brucenak@hotmail.com

Scott and Brenda Oseen

Email soseen@cciwireless.ca

Andrew & Willetta Oudman

Email ajoudman@gmail.com
Notes Lot 26

Chuck & Phyllis Powell

Email killdeer57@gmail.com

Charles & Dorothy Ridlehuber

Email cridlehuber@gmail.com *Charles Ridlehuber*
Notes Lot 46 *& Dorothy Ridlehuber*

Gary & April Seubert

Email mtnbiker5150406@gmail.com *Gary Seubert April Seubert*

Randy Shires

Email randy.shires@cesco.com

Don & Judith Spivey

Email donaldrspivey@gmail.com *Don Spivey*
Judith E. Spivey

Linda Stock

Email twodogfox@yahoo.com *Linda A Stock*

Stumptown Property Management

Email daveurfer@yahoo.com
Notes Lot 47

Greg & Peggy Taylor

Email books161@gmail.com

Mormino Family Trust

Paulette & Mike *Michael D. Mormino*
Email paulette5@cox.net *Paulette Mormino*

David & Colleen Turner

Email tqcdave@gmail.com

Todd Twete

Email toddtwete@yahoo.com
Notes Lot 25





Leesa Valentino

Email leesa@netfocal.com
Notes Lot 29

Doug Van Koten

Email dvanko@msn.com

Darrel Vankoten

Email dvankoten@gmail.com

John Witt

Email john@wittcogroup.com

Nate + Angie Pruitt

angelampruitt@gmail.com

David & Judy Feffer

fefferdavid1948@gmail.com

feffer.judy@gmail.com