

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
FOX HILL ESTATES, PHASE 1

THIS DECLARATION made this 15<sup>th</sup> day of NOVEMBER, 2004, by  
TML Construction, LLC. of 491 Creston Road, Kalispell, MT 59901, hereinafter called  
"Declarants",

WITNESSETH:

WHEREAS, Declarants are the owners of certain real property known as Fox Hill Estates, Phase 1, situated in Flathead County, Montana and more particularly described on the attached Exhibit "A" made a part hereof by reference, records of Flathead County, Montana and

WHEREAS, Declarants desire to subject the real property to the conditions, covenants and restrictions hereinafter set forth, each and all of which is and are for the benefit of said property and for each owner thereof, and which shall inure to the benefits of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest and any owner thereof;

NOW THEREFORE, the Declarants being the owners of all of the real property herein described, do hereby declare that said real property is and shall be, held, transferred, sold and conveyed subject to the conditions, restrictions, covenants and reservations hereinafter set forth; that all persons or corporations, or other legal entities, who now or shall hereinafter acquire any interest in and to the herein described property shall be held to agree and covenant with the owner of any of the property located in the Parcels herein described, or any portion thereof, with their heirs, successors and assigns, to conform to and observe the following covenants, conditions and restrictions as to the use thereof, and as to the construction of dwellings and improvements thereon.

#### ARTICLE I.

#### PROPERTY

The real property which is and shall be held, transferred, sold and conveyed subject to the covenants, conditions and restrictions hereinafter set forth, is located in Flathead County, Montana, and is more particularly described as follows, to-wit:

*See Exhibit "A" attached hereto.*

#### ARTICLE II.

#### DEFINITIONS

1. "**Homeowners Association**" shall mean the Fox Hill Estate Phase 1 Homeowners Association, Inc., its successors and assigns.
2. "**Owner**" shall mean the record owner of a fee simple title to any lot which is a part of the property and shall include contract buyers. The term "Owner" shall include declarant to the extent it is the owner of fee simple title to a lot.
3. "**Common Area**" shall mean all real property owned by the Association for the common use and enjoyment of others, including but not limited to parks, trails, roadways, easements, well sites, community water systems, recreational facilities, and surface or storm water collection and drainage systems, if any.
4. "**Lot**" shall mean any plot of land shown upon any recorded subdivision plat or map of the property with the exception of the Common Area.
5. "**Declarant**" shall mean TML Construction, LLC. Declarant may assign some or all of its rights under this Declaration to a third party by a written instrument specifically referring to

such rights recorded in the records of Flathead County, Montana. 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.

6. **"Water System"**. The Water System means the water wells, pumps, main water lines, and other equipment and facilities for providing a domestic water supply to Fox Hill Estates, Phase 1 Lots and Common Area. The water system includes storage tanks and pumps for fire suppression. The Water System does not include the service lines running from the house located on each Lot to the shutoff valve located near the property line of each Lot.

### ARTICLE III

#### PURPOSES

The property is subject to the covenants, conditions and restrictions hereby declared to insure the best use and the most appropriate development and improvement of each building site thereof, to protect the owners of building sites from improper use that will depreciate the value of their property; to preserve so far as is practicable the natural beauty of said property, to guard against the erection thereon of structures built of improper or unsuitable material; to encourage and secure the erection of attractive homes thereon; to adequately provide for a high quality of improvements on said property and thereby enhance the values of improvements made by purchasers of building sites; to be responsible for operation and maintenance of the water system, and storm water facilities in accordance with requirements set forth by the Montana Department of Health and Environmental Sciences; to be responsible for upkeep of the subdivision and common facilities.

### ARTICLE IV

#### PROTECTIVE COVENANTS

1. **Land Use.** The property may be used only for single family residential purposes. No professional business, manufacturing business or commercial activity may be conducted on any Lot in Fox Hill Estates, Phase 1. 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 which do not result in increased vehicular traffic shall not be considered commercial use.

2. **Further subdivision.** No Lot shall be subdivided for any purpose.

3. **Dwelling size:** The ground floor area of the main dwelling shall not be less than 1500 square feet of living area for a single story dwelling and 2000 square feet for two stories, exclusive of garage, covered walks and open porches. The height of any building shall be not more than 35 feet from the ground, as measured from existing grade of the building site, as determined prior to any site preparation. There shall be no more than one single family residence and associated out buildings on each lot. No dwelling shall have less than a two car enclosed garage.

4. **Building locations/set backs.** No building shall be located on any Lot nearer than 25 feet to the front property line, 20 feet to the rear property line, or nearer than 10 feet to any side Lot line. Buildings on corner Lots shall maintain a 25 feet set back from both streets. Written exceptions to this requirement may be granted by the architectural control committee. The set back on the rear property line on Lots 1 through 6 shall be 30 feet and no exceptions can be granted.

5. **Dwelling Construction.** All dwellings shall be constructed on the Lot and shall be permanent in nature. Only new materials may be used, except used brick, beams and the like, if an integral part of the architecture of the building. No steel siding, steel roofs or T11 siding. No trailer homes, mobile homes, modular homes, or pre-fabricated homes or any kind or type shall be placed on the Lot. No old buildings, whether intended for use in whole or in part as the main residential structure or for use for a garage or other building shall be moved upon any Lot. No temporary building or partly finished building or structure shall be erected or placed upon this property. Residential structures shall be completed within 12 months from the start of construction. The driveway shall be hard surfaced with asphalt or concrete or other material



approved by the architectural committee within one year from the completion of the construction of the dwelling. All construction shall be first reviewed and approved by the Architectural Review Committee.

6. **Maintenance.** All dwellings and other structures on said Lot shall be maintained, which includes painting and repairing of the structures in such a manner to be in a presentable condition.

7. **Temporary Structures.** No trailer, tent, shed, barn, or other outbuilding shall be used as a residence either temporarily or permanently.

8. **Outbuildings.** All outbuildings on the Lot shall be constructed in keeping with the construction and architectural of the other buildings on the Lot and are subject to approval by the Architectural Review Committee. All outbuildings shall be kept and maintained in good condition, repair and appearance.

9. **Underground utilities.** All utility lines to the Lots shall be buried underground in accordance with the appropriate regulations of the respective utility companies.

10. **Satellite dishes, towers, antennas and poles.** No antennas, poles, cellular towers, communication towers or other similar structures shall be erected unless approved by the Architectural Review Committee. All satellite dish receivers must also be approved by the Architectural Review Committee and shall be screened from neighbors' view.

11. **Fences.** Prior to the construction of all or any fences, the appearance, height, location and construction materials must be approved by the Architectural Review Committee. No privacy fences shall be allowed or approved, which means no solid fences and all fences must maintain at least 50% of open space.

12. **House numbers.** Owners shall maintain house numbers either on the house itself or at the driveway entrance. All house numbers shall be visible from the driveway entrance. Declarant or the Homeowners Association may develop standard house numbering displays, and if such standard house numbering is developed, all Lots shall be so numbered.

13. **Vehicles:** Mobile homes, motorhomes, trailers, large trucks, unlicensed or unsightly vehicles shall not be parked or allowed to remain along roadways. Motorhomes, trailers, pickups carrying campers, pickup campers not in use, boats and boat trailers shall be placed in a garage or other location where they are screened from view of the residences.

14. **Animals.** No animals of any kind shall be raised, bred, or kept on any lot, except that dogs, cats and other domestic animals may be kept and raised but not for commercial purposes. No livestock or poultry of any kind shall be raised, bred or kept on any Lot. Permitted animals must be confined to the lot of their owner and not permitted to run at large. All pet enclosures must be reviewed and approved by the Architectural Review Committee for height, materials and location prior to construction.

15. **Shooting.** No firearms shall be discharged on any Lot.

16. **Garbage.** All garbage cans used in connection with any dwelling erected upon the above described premises shall be kept from the view of the public. No garbage cans shall be maintained that are not of a suitable type or do not have covers sufficient to prevent the escape of any noxious odors from such cans.

17. **Signs.** No signs, advertising, or billboards of any kind shall be erected, used or maintained on the property except for the purpose of advertising for sale the property upon which it is erected.

18. **Offensive activity.** No noxious or offensive activities shall be carried on or permitted upon any of the properties or shall anything be done thereon which may or may not become an annoyance or be offensive to the neighborhood nor may the premises be used in any way for any purpose which may endanger the health or safety of, or unreasonably disturb the residents of any tract.



19. **Exterior grounds maintenance.** Each owner of a Lot shall maintain the law and grounds to preclude noxious weeds and other noxious growths. The owner will not permit refuse piles or other unsightly objects or growths to remain on the grounds.

20. **Outdoor Lighting.** Ground level lighting of patio, deck, driveway and entryway areas on any Lot that do no light areas outside such Lot or create glare are permitted. No other exterior lighting such as "yard lights" is permitted except as may be authorized by the Architectural Review Committee.

21. **Landscaping.** All landscaping is subject to the approval of the Architectural Review Committee.

## ARTICLE V.

### AGRICULTURAL

1. Lot owners are advised that agricultural activities are conducted in the immediate vicinity which may produce odors, noise, dust and involve the utilization of herbicides and pesticides, which may effect this property. The adjacent farms will not be liable for such odors, noise, herbicide or pesticide sprays that are necessary to good agricultural operations. Adjacent farms will not be liable for adverse ground water conditions caused by agricultural practices, including normal irrigation.

## ARTICLE VI.

### ARCHITECTURAL REVIEW

1. **Architectural Review Committee.** The Architectural Review Committee shall consist of the Declarant or Declarant's appointed agent until such time as 90% of the Lots have been sold and the Declarant has notified the Homeowners Association in writing that Declarant has determined that no additional property shall be added to Fox Hill Estates, Phase 1, at which time the duties and responsibilities of said committee shall be assigned to the Homeowners Association. However, the Declarant may assign the duties and responsibilities of said committee to the Association in writing at any time prior thereto.

No building, fence, wall, or other structure shall be commenced, erected or maintained upon the property, nor shall any addition to or change or alteration therein be made, nor shall any of the native vegetation growth be destroyed or removed until the plans and specifications showing the nature, kind, shape, height, materials, and location of the structure shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography and native vegetation by the architectural review committee. In the event said Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted and received, approval will not be required, and this provision will be deemed to have been fully complied with.

2. **Liability.** Neither the 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. Approval of plans and specifications under this provision shall not be deemed in lieu of compliance by Owner with applicable building codes or other governmental laws or regulations.

## ARTICLE VII.

### WATER SYSTEM

1. **Water System.** Each Lot shall be served by a Water System owned and operated by the Homeowners Association. Each structure designed for occupancy will connect to the Water System. No individual wells shall be permitted on any Lots. The water system also includes storage tanks and pumps for fire suppression, which can only be used for that purpose.



2. **Water Use Intent.** It is the intent of the Declarants herein to establish and declare covenants, conditions and terms for the maintenance of a water well system, a water transportation system from said well system, provisions for the sharing of water, terms and conditions for assessing fees and costs, and all other matters necessary to insure an adequate supply of safe and potable water for the benefit of present and future owners of the property subject to this subdivision.

3. **Water wells.** The water wells utilized for the water system is located on the area of the subdivision. Said system consists of wells, casing, piping, pumps, meters, gauges and other materials essential as and for a water well system. Said water wells and the related personal property appurtenant thereto will belong to and will be owned by the Association upon transfer by the Declarant.

4. **Use of Water.** Water use, the right to "connect" to the water system and the utilization of water from said system is specifically limited to members of the Association. Each lot owner by a member of the Association and the residence constructed thereon shall be and is entitled to the absolute and continuing use of the wells as herein described, to include the common water supply system consisting of but not limited to pumps, pipes, meters and all other matter, materials and property necessary for the supply of water and constituting the well system as located on common property of this Association. The use of water shall only be for domestic household, yard and gardens purposes. The water for storage tanks and pumps for fire suppression shall only be used for fire suppression.

5. **Maintenance and Operation.** (a) On completion and transfer by the Declarant, the Water System will be owned, operated, repaired, maintained, and replaced by the Homeowners Association. The Water System shall be operated in conformance with the applicable rules and regulations of the Montana Department of Environmental Quality (or its successor agency). If required by such regulations, the Homeowners Association shall contract with a licensed operator to operate the Water System. (b) each owner shall be responsible for the operation, repair, maintenance and replacement of the portion of the service line running from the shut off valve (hook up point) to the residence and all other water facilities location on that owner's lot. The Association shall not be responsible for maintaining any service line owned by a lot owner or damages caused by water escaping therefrom. The Association shall have the right to inspect the lot owner's water system. (c) the association shall repair and maintain the water system to the point of hook up on each lot. The Association shall also maintain, operate and own the fire suppression equipment.

6. **Limited warranty by Declarant.** Declarant shall be responsible for the construction of the water system. Declarant warrants the Water System for a period of one year from substantial completion of the Water System. During this warranty period, Declarant will repair or replace any portion of the Water System that is defective. In addition, Declarant hereby assigns all warranty rights that Declarant may have from any engineers, well drillers, contractors and suppliers ("Third-party providers") in connection with the construction of the Water System to the Homeowners Association. THE LIMITED WARRANTY OF DECLARANT AND THE ASSIGNMENT OF ALL WARRANTIES FROM THIRD-PARTY PROVIDERS IS IN LIEU OF AND REPLACES ANY IMPLIED WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE FROM DECLARANT, AND DECLARANT MAKES NO IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF HABITABILITY, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR IMPLIED WARRANTY OF ANY KIND CONCERNING THE WATER SYSTEM.

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

8. **Conservation.** The Association shall have the authority to require water conservation practices.

9. **Other costs to Lot owner.** The association shall have the authority to require the lot owners to install and pay for metering, backflow prevention devices and other related equipment.



10. **Water rates, hookups and charging.** The Board of Directors of the Association shall establish the water rates, hookups and assessment charging, from time to time.

## ARTICLE VIII

### HOMEOWNERS ASSOCIATION

1. **Association.** The Declarant will form an association of lot owners. All owners of lots shall be members. The membership of the association shall be appurtenant to and shall not be separated from ownership of any lot. Members shall participate in the manner prescribed by the Articles and By-Laws of the Association and resolutions of the Association's Board of Directors. The Association's purpose is to control, maintain and improve the Common Area, water system and provide services and facilities to the Owners as it may determine.

2. **Association Property.** Every owner who is an owner of the Association shall have the right of easement and enjoyment in and to the Common Area which right shall be appurtenant to and shall pass along with title to every Lot subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use, care, maintenance and improvement of the common area and the furnishing or providing of water supply or other facilities and services to the property. Any assessment charged to a lot shall become a lien on the lot on the date the assessment is due. All owners of a lot are personally responsible, jointly and severally for the payment of assessments.

(b) The right of the Association to suspend the use or enjoyment of the common areas or facilities and services provided directly or indirectly by it for any period during which any fee or assessment against an owner's lot remains unpaid, or for the continued violation of the Articles and By-Laws of the Association or the resolutions of the Association's Board of Directors.

3. **Management and Responsibility For Assessments by Declarant.** Until the Declarant has notified the Homeowner's Association in writing that Declarant has determined that no additional property shall be added to Fox Hill Estates, Phase 1 and 90% of all of the lots in the development have been sold, Declarant may appoint, remove and replace from time to time any or all of the directors and officers of the Homeowner's Association. Declarant may also amend any bylaws of the Fox Hill Estates Homeowners' Association without consent of the Lot owner or members of the homeowners' association until such time as 90% of the lots have been sold and Declarant has elected not to add any property to Fox Hill Estates, Phase 1. Also during such time no construction of improvements shall take place or maintenance or uses shall be made without prior written consent of the Declarant. Until 90% of the lots have been sold and Declarant has determined no property shall be added to the development, Declarant, even though it is the record owner of lots, shall not be responsible for any assessment for lots even for improvements, unless Declarant constructs a home on such Lot. Declarant shall pay, however, an appropriate share as determined by Declarant, of the actual costs of snow removal or continued road maintenance or water system maintenance or repair.

4. **Voting.** Subject To Declarants Rights As Provided Herein. 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.

5. **Road Maintenance.** The roads within Fox Hill Estates, Phase 1 shall be maintained, repaired and replaced by the Homeowners Association, including plowing of snow. The roads shall be maintained in good condition to allow year-around access to all Lots. Until 90% of the lots have been sold and Declarant has notified the Homeowner's Association that no additional property will be added to the development, no gates, other impediments, or signage may be placed on any roads without the prior written consent of Declarant. The Homeowner's 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 or prevent usage



of the roads by persons other than Owners and their guests and invitees, or other who are authorized to use the roads, except as otherwise provided herein.

## ARTICLE IX

### EXPANSION

6. **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. Declarant may also undertake improvements or additions to the water system to serve the additional Lots created by the expansion.

## ARTICLE X

### DURATION AND AMENDMENT

1. **Duration.** 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 of the options, privileges, covenants or rights created by this declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the Declarant.

2. **Amendment.** Until the Declarant has sold ninety percent (90%) of the Lots within Fox Hill Estates (including all phases) and the Declarant has notified the Homeowners Association in writing that the Declarant has determined that no additional property shall be added to Fox Hill Estates, Phase 1 this declaration may be amended by the Declarant. After such period this declaration may be amended or repealed by the owners of 75% of the Lots.

## ARTICLE X

### MISCELLANEOUS

1. **Term and enforcement.** These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date these covenants are recorded. after which time said covenants shall be automatically extended for successive periods of ten (10) years.

2. **Limited liability.** Neither Declarant, the Homeowners association, the architectural review committee or, their respective officers, directors, employees or agents shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

3. **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.

4. **No waiver.** Failure to enforce any provision contained in the declaration shall not operate as a waiver of any such provision or of any other provision of this declaration.

5. **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.

6. **Enforcement and Remedies:** Each provision contained in this declaration shall be enforceable by the Homeowners Association or by an Owner who has first made written demand on the Homeowners Association to enforce such provision and 30 days have lapsed without appropriate action having been taken by the Homeowners Association. Any enforcement action may be by a proceeding for such relief as may be provided at law or in equity, including but not limited to a temporary or permanent injunction and/or a suit or action to recover damages.

200432211520

TML Construction, LLC

By Terry Leighty  
Title: owner of TML Construction LLC

STATE OF MONTANA )  
: ss.  
County of Flathead )

On this 15<sup>th</sup> day of NOVEMBER, 2004, before me, the undersigned, a Notary Public for the State aforesaid, personally appeared TERRY LEIGHTY, known to me to be the owner, of TML Construction, LLC and the person who executed the foregoing instrument on behalf of such corporation, and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate last above written.



Rebecca J. Black  
Signature  
(Print Name) Rebecca J. Black  
Notary Public for the State of Montana  
Residing at: KATISPELL MT  
My commission expires: 04-08-2004



2004322 11520

Lots 7 through 32 inclusive, Park A, Park B and private roads of Fox Hill Estates, Phase I, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana;  
SUBJECT TO Mortgage to Glacier Bank, recorded June 10, 2003, under Instrument No. 2003-191-1542-0, records of Flathead County, Montana.

Return To: TML Construction LLC  
485 Creston Rd  
Kalispell, MT 59901

STATE OF MONTANA COUNTY OF FLATHEAD) ss  
RECORDED IN THE RECORDS OF FLATHEAD COUNTY, STATE OF MONTANA, COPY  
AT THE REQUEST OF AT&C ON  
11-17 2004 11:52 o'clock 54 PM PAID  
PAUL A. ROBINSON, CLERK AND RECORDER BY  
Paula Robinson DEPUTY  
RETURN  
DOCUMENT # 2004322 11520

Plat 200431512310

**EXHIBIT A**