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Debbie Pierson, Flathead County MT by NW

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**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF FOX HILL ESTATES,
PHASE 1, PHASE 2 AND PHASE 4, LEAVING PHASE 3 TO BE RESTRICTED**

THIS DECLARATION is made this 22nd day of November, 2016, by TML Construction, LLC, of 491 Creston Road, Kalispell, MT 59901, hereinafter called "Declarant."

WITNESSETH:

WHEREAS, as of this date the existing Declaration of Covenants, Conditions and Restrictions of Fox Hill Estates, Phase 1, Phase 2, and Phase 4 are set forth in two documents placed of record, to-wit (1) on July 23, 2008, under Doc. No. 200800020907, and (2) on November 7, 2014 under Doc. No. 201400022817;

AND WHEREAS, when Phase 3 is developed, Declarant will impose all Covenants, Conditions and Restrictions placed on Fox Hill Estates Phase 1, Phase 2 and Phase 4 on Phase 3;

AND WHEREAS, Declarant is permitted to act, and Declarant hereby acts, pursuant to Article XI, paragraph 2, of said existing Declaration of Covenants, Conditions and Restrictions (Doc No. 200800020907), which reads:

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, Phase 2 and Phase 4, the Declarant may amend this declaration. After such period this declaration may be amended or repealed by the owners of 75% of the Lots.



AND WHEREAS, Article VII concerns the Water System and Article VIII concerns the Septic System and, now, by this amendment said Articles VII and VIII are to be repealed and replaced with a newly-labeled Article VII-VIII Water and Sewer;

NOW, THEREFORE, the Declarant does hereby amend the Declaration of Covenants, Conditions and Restrictions of Fox Hill Estates, Phase 1, Phase 2, and Phase 4, recorded on July 23, 2008, under Doc. No. 200800020907, records of Flathead County, Montana, leaving that Amendment filed on November 7, 2014 under Doc. No. 201400022817 unchanged, by deleting the existing Article VII Water System and Article VIII Septic System entirely, and replacing said Articles with a new article labeled Article VII-VIII Water and Sewer (having no application to Lots 31 and 32), to-wit:

ARTICLE VII-VIII SEWER AND WATER

1. A water system and a sewer system have been established in the common areas to provide water and septic/sewer services to and from Lots which were subject to the prior Articles VII and VIII of Doc. No. 200800020907, and those Lots shall continue to receive water and septic/sewer services. However, (1) ownership of all water wells, casings, piping, pumps, meters, gauges and other materials essential as and for a water well system located in common areas and serving Homeowners in general; and (2) ownership of all components of the septic or sewer system for servicing two or more Lots, including check and ball valves, valve boxes, surge tanks and pumps, an effluent distribution system, all elevated sand mound drainfields, all control and alarm panels, all wiring electrical connections, and all other components relating to these elements located in common areas and serving Homeowners in general shall be owned by a private small water and sewer utility company or by the Homeowners Association, at the sole discretion of the Declarant.

2. Should Declarant elect to sell the water system (and water rights) and septic/sewer system to a private small water and sewer utility company, such company shall be subject to and governed by the Montana Public Service Commission, whereby all laws, rules and regulations of the Montana Public Service Commission over such utilities will be enforced assuring that the company will be required to furnish reasonably adequate service and facilities with charges to be reasonable and just; and such private small water and sewer utility company must also obey and abide by the laws, rules and regulations of the Montana Department of Environmental Quality governing water supply systems and wastewater treatment systems, in all respects.

3. Should Declarant elect to sell the water system (and water rights) and septic/sewer system to the Homeowners Association, a provision shall be



made, at the time of sale, to implement a uniform, non-discriminatory per Lot served capital improvement assessment, and a periodic use rate charge shall be set with future changes to require a majority vote of the owners of Lots being assessed and served.

4. The water system and septic/sewer system may expand its facilities to serve property within or outside of the subdivision.

5. Each Lot served by the water system and septic/sewer system shall have the absolute and continuing right to receive such service, with use of water restricted for domestic household, yard and garden purposes. Water for storage tanks and pumps for fire suppression shall only be used for fire suppression. Any private water or sewer line placed from a hookup point on or to the common service lines to privately serve a residence or other improvement on a Lot shall be owned, maintained and replaced by the Lot owner without right to seek contribution from other Lot owners, the Homeowners Association, or the private small water and sewer utility company owning the water system (and water rights) and septic/sewer system.

6. The mutual and perpetual easements over, across and under the ground for the common infrastructure and for private Lot lines serviced by or connected to the common infrastructure presently in place shall continue to be recognized and honored at all times to assure that the entire common and private infrastructure can be operated, maintained, repaired and replaced, from time to time, with the easements affecting not only the infrastructure locations but areas near and along the infrastructure for access of persons and equipment. Additional easements shall be granted to permit expansion as stated in paragraph 4, including placement of structures required for the water system and septic/sewer system.

7. Should a Lot owner fail to properly maintain his, her or their infrastructure which connects to the common infrastructure and such failure adversely affects the common infrastructure, then, after the Lot owner fails to repair within 14 days of notice to do so, workers assigned by the private utility company or Homeowners Association, as the case may be, may enter upon the Lot deemed out of compliance and take such action as may be necessary to cure or solve the defect. All costs and expenses of such action shall be the responsibility of the Lot owner; and if necessary, a construction or homeowner's lien may be filed against the Lot and the owner of the Lot to secure payment.

Except as amended by this Amendment, the existing Declaration of Covenants, Conditions and Restrictions of Fox Hill Estates, Phase 1, Phase 2, and Phase 4, recorded as Doc. No. 200800020907, records of Flathead County, Montana,



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and recorded as Doc No. 201400022817, records of Flathead County, Montana, shall remain in full force and effect. Any provisions in conflict herewith are superseded by this Declaration, excepting Lots 31 and 32.

Dated the day and year first above stated.

TML Construction, LLC

By

Terry J. Leighty member

Terry J. Leighty, Member

By

Mark D. Leighty member

Mark D. Leighty, Member

STATE OF MONTANA

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County of Flathead

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On this 22 day of November, 2016, before me, the undersigned, a Notary Public for the State of aforesaid, personally appeared Terry J. Leighty and Mark D. Leighty, known to me to be the Members of TML Construction, LLC, and the persons who executed the foregoing instrument on behalf of such limited liability company, and acknowledged to me that said limited liability company executed the same.

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

