

Return to:  
Mark Hash  
P.O. Box 1178  
Kalispell, MT 59903



201900011154  
Page: 1 of 15  
Fees: \$105.00  
6/7/2019 2:41 PM

AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
FOX HILL ESTATES PHASE 1, PHASE 2, AND PHASE 4

THIS AMENDMENT is made this 7th day of June, 2019, by  
TML Construction, LLC, of 491 Creston Road, Kalispell, MT 59901, hereinafter called "Declarants",

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions and Restrictions of Fox Hill Estates, Phase 1, dated November 1<sup>st</sup>, 2004, concerning real property owned by Declarants and situated in Flathead County, Montana, was recorded with the Clerk and Recorder of Flathead County, Montana on November 17, 2004, under Document No. 200432211520, records of Flathead County, Montana;

WHEREAS, multiple Amendments to said Declaration have been made and filed of record in the records of Flathead County, Montana, which Amendments, among other provisions, have added additional property to said Declarations, said property being identified as Fox Hill Estates Phase 2 and Fox Hill Estates Phase 4;

WHEREAS, Declarants are the owners of certain real property known as Fox Hill Estates, Phase 3, situated in Flathead County, Montana, and more particularly described in Exhibit C attached hereto and by this reference made a part hereof;

WHEREAS, Declarants desire to subject the real property in Fox Hill Estates, Phase 3 to the Declaration of Covenants, Conditions and Restrictions of Fox Hill Estates, Phase 1, Phase 2 and Phase 4, and make other amendments to said Declarations, 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 benefit 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;

WHEREAS, the Declaration of Covenants, Conditions and Restrictions of Fox Hill Estates, Phase 1, Phase 2, and Phase 4, dated July 22, 2008, recorded with the Clerk and Recorder of Flathead County, Montana on July 22, 2008, under Document No. 200800020907 for Flathead County, Montana, allows the Declarants to amend the contents of said Declarations, and to include additional property subject to said Declarations, until such time as 90% of the lots are sold, or until the Declarants give written notice that they do not intend to add more properties to said Declarations; and

WHEREAS, neither of said events has occurred as of the date hereof, therefore the Declarants have the ability and right to amend any and all of said Declarations;

NOW THEREFORE, the Declarants do hereby declare that all Declarations of Covenants, Conditions and Restrictions of Fox Hill Estates, Phase 1, Phase 2, and Phase 4 and all amendments thereto, are hereby amended by replacing in their entirety and in their place and stead with the provisions contained in Exhibit A, attached hereto and by this reference made a part hereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 7 day of June 2019.

TML CONSTRUCTION, LLC

TML CONSTRUCTION, LLC

By Terry J. Leighty  
Terry J. Leighty, Member

By Mark D. Leighty  
Mark D. Leighty, Member

0009756 - 0009779 - 0505179 - 0505199  
0500340 - 0500349  
0505201 - 0505212  
★★

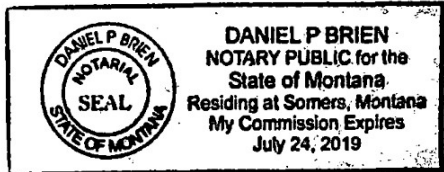
STATE OF MONTANA )

: SS.

# County of Flathead

On this 7 day of June, 2019, before me, the undersigned, a Notary Public for the State 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 Notarial Seal the day and year in this certificate last above written.




  
Notary Public for the State of Montana

EXHIBIT A



201900011154  
Page: 3 of 15  
Fees: \$105.00  
6/7/2019 2:41 PM

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
FOX HILL ESTATES, PHASE 1, PHASE 2, PHASE 3, AND PHASE 4**

THIS DECLARATION is made this 24 day of April, 2019, by TML Construction, LLC, of 491 Creston Road, Kalispell, Montana 59901, hereinafter called "Declarants",

**WITNESSETH:**

**WHEREAS**, the Declaration of Covenants, Conditions and Restrictions of Fox Hill Estates, Phase 1, dated November 1<sup>st</sup>, 2004, concerning real property owned by Declarants and situated in Flathead County, Montana, was recorded with the Clerk and Recorder of Flathead County, Montana on November 17, 2004, under Document No. 200432211520, records of Flathead County, Montana;

**WHEREAS**, multiple Amendments to said Declarations have been made and filed of record in the records of Flathead County, Montana, which Amendments, among other provisions, have added additional property to said Declarations, said property being identified as Fox Hill Estates Phase 2, and Fox Hill Estates Phase 4; and

**WHEREAS**, Declarants are the owners of certain real property known as Fox Hill Estates, Phase 3, situated in Flathead County, Montana, and more particularly described on the attached Exhibit D, attached hereto and by reference made a part hereof, records of Flathead County, Montana; and

**WHEREAS**, Declarants desire to subject the real property described in Exhibits B, C, D and E 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 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 Exhibits B, C, D and E, attached hereto and by this reference made a part hereof.*

**ARTICLE II  
DEFINITIONS**

## EXHIBIT A

1. **"Homeowners Association"** shall mean the Fox Hill Estates Phase 1, Phase 2, Phase 3, and Phase 4, 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 and septic 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 Flathead County, Montana. Such instrument may specify the extent and portion of the rights or interests as a declarant that are being assigned, in which case the initial Declarant shall retain all other rights as Declarant.

6. **"Water system"** shall mean facilities (not owned within an individual lot), including but not limited to wells, water rights, storage tanks, pumps, pump houses, utility buildings, control panels, generators, water mains, easements, valves and all related appurtenances serving Phases 1, 2, 3, and 4.

7. **"Septic system"** shall mean facilities (not owned within an individual lot) such as sewer force mains, a treatment facility, pumps, drainfields, easements, utility buildings, control panels, monitoring wells, and all related appurtenances serving lots in Phases 3 and 4.

## 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 and septic 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 (DOES NOT APPLY TO LOTS 31 and 32 IN FOX HILL ESTATES PHASE 4)

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, Phase 2, Phase 3 and Phase 4. 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. Lots cannot be used as

Exhibit A



201900011154  
Page: 4 of 15  
Fees: \$105.00  
6/7/2019 2:41 PM

APR 24 2019



## EXHIBIT A

road access to adjoining properties to Fox Hill Estates Phase 1, Phase 2, Phase 3 and Phase 4. The Article IV protective covenants 1-21 do not apply to Lots 31 & 32 in Fox Hill Estates Phase 4.

**2. Further subdivision.** No lot shall be subdivided for any purpose, except, however, Lots 31 and 32 in Fox Hill Estates Phase 4 may be subdivided in such a manner as to create 4 lots in total.

**3. Dwelling size:** For property in Phase 1, the ground floor area of the main dwelling shall not be less than 1,500 square feet of living area for a single story dwelling and 2,000 square feet for two stories, exclusive of garage, covered walks and open porches. For property in Phase 2, the ground floor area of the main dwelling shall not be less than 2,000 square feet of living area for a single story dwelling and 1,500 square feet for two stories, exclusive of garage, covered walks and open porches. For property in Phase 3 and Phase 4, the ground floor of the main dwelling shall not be less than 1,600 square feet of living area for a single story dwelling exclusive of garage, covered walks and open porches. For property in Phase 1 and Phase 2, 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 foot set back from both streets. The architectural control committee may grant written exceptions to this requirement. 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, vinyl siding, 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



## EXHIBIT A

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, and 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

Exhibit A

-4-



201900011154  
Page: 6 of 15  
Fees: \$105.00  
6/7/2019 2:41 PM

APR 24 2019

## EXHIBIT A

**1. Architectural Review Committee.** The Architectural Review Committee shall consist of the Declarant or Declarant's appointed agent until such time as 100% 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, Phase 2, Phase 3 and Phase 4, 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. This provision will be deemed to have been fully complied with 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.

**Architectural Review** shall not apply to lots 31 and 32 nor to any lots created by any subdivision of said lots. However, any buildings constructed on said property shall conform with the architectural specifications set forth in Article III and said property shall be subject to the condition that any improvements located on said property shall be subject to the condition that any improvements located on said property shall be constructed of high quality materials, shall be of quality design and be constructed on so as not to detract from the nature of the other improvements located on the other properties subject to these covenants.

**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-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 Associate, 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



## EXHIBIT A

Department of Environmental Quality governing water supply systems and wastewater treatment systems, in all respects. Declarant has sold the water system and septic/sewer system to Fox Hill Utilities, LLC.

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.

8. Except however, this section dealing with the community water system designed for Phase 4 shall not apply to Lots 31 and 31. Lots 31 and 32 shall be allowed to drill individual wells on said property and shall be responsible for furnishing water to said lots at the lot owners expense.

9. Except, however, Septic System shall not apply to Lots 31 and 32 as they are not sufficient size to install individual septic systems on said property. Said lots shall be responsible for the installation and maintenance of their own septic system.

10. **Limited warranty by Declarant.** Declarant was responsible for the construction of the water and septic systems. Declarant warrants the water and septic systems for a period of one year from their substantial completion. 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.





## EXHIBIT A

11. **Assessments.** The owner of the water and septic systems shall establish the rates and assessment charges, from time to time.

### ARTICLE IX 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, septic system and provide services and facilities to the Owners as it may determine. Except, however, the **Homeowners' Association** shall not apply to lots 31 and 32 except to the extent that lots 31 and 32 shall be responsible for their proportionate share of the road maintenance costs associated with the portion of the roads in said properties that relate to the portion of said roads used by said lots 31 and 32 to access their property.

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, septic system 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.

(c) Declarant reserves and shall have an easement over all of the common area for ingress, egress and utilities. Declarant may grant further easements to others for such use of common areas.

3. **Management and Responsibility For Assessments by Declarant.** Until 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, Phase 2, Phase 3 and Phase 4, and 100% 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 100% of the lots have been sold and Declarant has elected not to add any property to Fox Hill Estates Phase 1, Phase 2, Phase 3 and Phase 4. 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 100% 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. This provision regarding Declarant assessments applies even if Declarant has transferred control to the Homeowners' Association and cannot be modified without written consent of Declarant.

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, Phase 2, Phase 3 and Phase 4 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 100% of the



## EXHIBIT A

lots have been sold and Declarant has notified the Homeowners' 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 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 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 X EXPANSION

**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 and septic systems to serve the additional Lots created by the expansion. This Article also applies to Lots 31 and 32.

## ARTICLE XI DURATION AND AMENDMENT (THIS ARTICLE ALSO APPLIES TO LOTS 31 AND 32)

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 One Hundred percent (100%) 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, Phase 3 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.

## ARTICLE XII MISCELLANEOUS (THIS ARTICLE ALSO APPLIES TO LOTS 31 AND 32)

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.



EXHIBIT A

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.

TML CONSTRUCTION, LLC

By Terry J. Leighty member  
Terry J. Leighty, Member

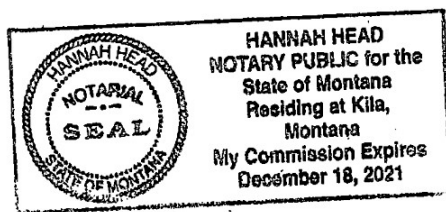
TML CONSTRUCTION, LLC

By Mark D. Leighty Member  
Mark D. Leighty, Member

STATE OF MONTANA       )  
                                      : ss.  
County of Flathead       )

On this 24<sup>th</sup> day of April 2019, before me, the undersigned, a Notary Public for the State 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 Notarial Seal the day and year in this certificate last above written.



Hannah Head  
Notary Public

201900011154  
Page: 11 of 15  
Fees: \$105.00  
6/7/2019 2:41 PM

Lots 7 through 32 inclusive, Park A, Park B and private roads of Fox Hill Estates, Phase 1, 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.

THE ABOVE DESCRIBED TRACT OF LAND SHALL HEREAFTER BE KNOWN AS  
**FOX HILL ESTATES PHASE 1**

**EXHIBIT "B"**

A tract of land, situated, lying, and being in the Southeast Quarter of the Northwest Quarter and in the Northeast Quarter of the Southwest Quarter of Section 10, Township 28 North, Range 20 West, P.M.M., Flathead County, Montana, and more particularly described as follows to-wit:

Beginning at the Southwest corner of the Southeast Quarter of the Northwest Quarter of Section 10, Township 28 North, Range 20 West, P.M.M., Flathead County, Montana, which is a found iron pin on the South boundary of the Plat of Fox Hill Estates, Phase 1 (records of Flathead County, Montana); thence along said South boundary N 89° 17' 07" E 227.08 feet to the centerline of the 60 foot private road and utility easement known as Foxtail Drive; thence along said centerline N 04° 00' 00" E 73.42 feet; thence leaving said centerline East 253.84 feet to a found iron pin and the southeast corner of said plat; thence leaving said boundary South 1387.09 feet to a set iron pin on the South boundary of the Northeast Quarter of the Southwest Quarter of said Section 10; thence along said South boundary S 89° 09' 04" W 485.59 feet to a found iron pin and the Southwest corner thereof which is on the East boundary of the Amended Plat of Lot 4, Sunny Dene (records of Flathead County, Montana); thence along said East boundary N 00° 03' 25" W 661.09 feet to a found iron pin and the Southeast corner of the Amended Plat of Lot 3, Sunny Dene (records of Flathead County, Montana); thence along the East boundary of said Amended Plat N 00° 00' 54" E 657.11 feet to the Point of Beginning and containing 15.122 acres;

SUBJECT to and together with all appurtenant easements of record.

The above-described tract of land is known as Fox Hill Estates, **Phase 2**

EXHIBIT "C"

A TRACT OF LAND, SITUATED, LYING, AND BEING IN THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 28 NORTH, RANGE 20 WEST, P.M.,M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

**BEGINNING** at the northwest corner of the Northeast Quarter of the Northwest Quarter of Section 10, Township 28 North, Range 20 West, P.M.,M., Flathead County, Montana, which is on the centerline of a 60 foot county road known as Mennonite Church Road; Thence along the north boundary of said NW1/4 and along said centerline N89°38'27"E 268.55 feet; Thence leaving said centerline S00°03'47"E 281.93 feet to a found iron pin; Thence S14°35'29"E 138.71 feet to a found iron pin; Thence S42°30'00"W 164.51 feet to a found iron pin on the northerly R/W of a 60 foot private road and utility easement known as Foxtail Drive; Thence along said R/W N47°30'00"W 129.08 feet to a found iron pin; Thence leaving said northerly R/W S42°30'00"W 60.00 feet to a found iron pin on the southerly R/W of said Foxtail Drive; Thence along said R/W S47°30'00"E 31.45 feet to a found iron pin on the westerly R/W of a 60 foot private road and utility easement known as Fox Den Trail; Thence along said westerly R/W S42°30'00"W 120.52 feet to a found iron pin and the P.C. of a 530.00 foot radius curve, concave southeasterly, having a central angle of 29°30'00"; Thence along an arc length of 272.88 feet to a found iron pin; Thence S13°00'00"W 103.02 feet to a found iron pin and the P.C. of a 770.00 foot radius curve, concave northwesterly, having a central angle of 24°51'00"; Thence along an arc length of 333.96 feet to a found iron pin and the P.R.C. of a 430.00 foot radius reverse curve, concave southeasterly, (radial bearing S52°09'00"E); Thence southwesterly along said curve through a central angle of 12°27'02" an arc length of 93.44 feet to a found iron pin on the northerly R/W of a 60 foot private road and utility easement known as West Fox Den Trail, which is the P.C. of a 430.00 foot radius curve, concave southwesterly (radial bearing S18°09'19"W); Thence northwesterly along said northerly R/W and along said curve through a central angle of 18°10'01" an arc length of 136.34 feet to a found iron pin; Thence S89°59'17"W 65.03 feet to a found iron pin; Thence leaving said R/W N00°00'37"W 310.72 feet to the thread of a creek; Thence along said thread the following thirty-one (31) courses: N87°47'41"E 11.85 feet; N35°01'37"E 22.85 feet; N14°43'14"E 95.84 feet; N28°55'20"E 56.40 feet; N11°26'16"E 31.37 feet; N37°38'07"E 31.16 feet; N75°58'10"E 31.53 feet; S78°55'20"E 25.18 feet; N83°28'50"E 23.28 feet; N42°54'54"E 115.61 feet; N65°13'48"E 46.96 feet; N13°24'29"E 35.59 feet; N33°10'21"E 33.05 feet; N03°04'12"W 30.41 feet; N17°36'37"W 78.84 feet; N02°52'26"E 34.55 feet; N20°54'31"W 42.42 feet; N31°32'45"W 39.27 feet; N47°16'38"W 30.54 feet; N59°53'49"W 45.13 feet; N45°14'40"W 45.96 feet; N36°06'49"W 49.34 feet; N44°38'13"W 44.12 feet; N29°35'13"W 84.08 feet; N36°54'46"W 14.04 feet; N66°53'59"W 25.24 feet; N82°05'09"W 33.99 feet; N54°29'25"W 14.16 feet; N35°22'20"W 21.74 feet; N18°58'31"W 39.90 feet; N05°02'52"W 13.73 feet; Thence leaving said thread N89°38'27"E 484.02 feet to a found iron pin on the westerly R/W of said Foxtail Drive; Thence along said R/W N00°20'00"W 60.00 feet to the north boundary of the Northwest Quarter of the Northwest Quarter of said Section 10 and the centerline of said Mennonite Church Road; Thence along said north boundary and along said centerline N89°38'27"E 87.56 feet to the point of beginning and containing 12.569 ACRES, more or less; Subject to and together with a 60 foot county road as shown hereon; Subject to and together with all appurtenant easements of record.

THE ABOVE DESCRIBED TRACT OF LAND SHALL HEREAFTER BE KNOWN AS:  
**FOX HILL ESTATES, PHASE 3**

EXHIBIT "D"

A TRACT OF LAND, SITUATED, LYING, AND BEING IN THE EAST HALF OF THE NORTHWEST QUARTER AND IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 28 NORTH, RANGE 20 WEST, P.M.,M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

**BEGINNING** at the northeast corner of the Northwest Quarter of Section 10, Township 28 North, Range 20 West, P.M.,M., Flathead County, Montana, which is a found aluminum cap on the centerline of a 60 foot county road known as Mennonite Church Road; Thence along the east boundary of said NW1/4 and along the east boundary of the Northeast Quarter of the Southwest Quarter of said Section 10, S00°03'59"W 3951.68 feet to a found iron pin and the southeast corner of said NE1/4SW1/4; Thence along the south boundary of said NE1/4SW1/4 S89°09'04"W 831.60 feet to a found iron pin; Thence NORTH 3386.40 feet to a set iron pin; Thence N89°11'39"E 775.50 feet to a set iron pin on the westerly R/W of a 60 foot private road and utility easement; Thence northeasterly along said R/W N00°03'59"E 566.32 feet to the north boundary of said NW1/4 and the centerline of said Mennonite Church Road; Thence along said north boundary and along said centerline N89°38'27"E 60.00 feet to the point of beginning and containing 65.569 ACRES; Subject to and together with a 60 foot county road as shown hereon; Subject to and together with all appurtenant easements of record.

THE ABOVE DESCRIBED TRACT OF LAND SHALL HEREAFTER BE KNOWN AS:  
**FOX HILL ESTATES, PHASE 4**

EXHIBIT "E"