

**DECLARATION
OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR**



EMPIRE ESTATES

This Declaration of Covenants, Conditions, Restrictions and Easements for EMPIRE ESTATES (the "Declaration") is made this 8th day of June, 2004, by Wayne E. Turner (hereinafter the "Declarant").

**ARTICLE I
STATEMENT AND PURPOSE AND IMPOSITION OF COVENANTS**

Section 1.1. *Owner.* The Declarant is the owner of the property in Flathead County, Montana, more particularly described as follows (the "Property"):

The West half of the Southwest Quarter (W 1/2 SW 1/4) of Section 1, Township 28 North, Range 22 West, Flathead County, Montana.

Excepting therefrom that portion deeded to the State of Montana, State Highway Commission, by Bargain and Sale Deed recorded December 1, 1955, Book 393, Page 212, as Document No. 8196, Records of Flathead County, Montana.

Section 1.2. *Purpose.* The purpose of the Declarant in making this Declaration is to create a development of single-family and duplex homesites known as Empire Estates on the Property (the "Project" or "Empire Estates").

The Declarant further intends to ensure the attractiveness of the Property, including the residences and other improvements constructed on it; to prevent any future impairment of the Property and to guard against the construction on the Property of improvements of improper or unsuitable materials or with improper quality or methods of construction; to protect and enhance the values and amenities of the Property; to provide for the operation, administration, use and maintenance of the common areas within the Property; to preserve, protect and enhance the values and amenities of the Property; and to promote the health, safety, and welfare of the owners of the Property.

Section 1.3. *Imposition of Covenants.* To accomplish the purposes indicated above, the Declarant hereby declares that from the date of recording this Declaration forward, the Property will constitute a planned community known as Empire Estates, and will be held, sold, and conveyed subject to the following covenants, conditions, restrictions and easements (collectively, these "Covenants"). These Covenants will run with the land and will be binding upon all persons or entities having any right, title, or interest in all or any part of the Property (including Declarant) and their heirs, successors, and assigns, and their tenants, employees, guests, and invites. These Covenants will inure to the benefit of each owner of the Property.

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**ARTICLE II
DEFINITIONS**

The following terms, as used in this Declaration, are defined as follows:

Section 2.1. "*Annual Assessment*" means the Assessment levied annually pursuant to Section 9.3.

Section 2.2. "*Architectural Review Committee*" or "*Committee*" means the committee formed pursuant to Article VI to maintain the quality and architectural harmony of improvements in Empire Estates.

Section 2.3. "*Articles*" or "*Articles of Incorporation*" means the Articles of Incorporation of the Empire Estates Homeowners' Association, Inc., a Montana non-profit corporation, which have been filed with the Montana Secretary of State, as such articles may be amended from time to time.

Section 2.4. "*Assessments*" means the Annual, Special and Default Assessments levied pursuant to Article IX to meet the estimated cash requirements of the Empire Estates Homeowners' Association.

Section 2.5. "*Default Assessment*" means the Assessment levied annually pursuant to Section 9.5.

Section 2.6. "*Bylaws*" means the bylaws of the Empire Estates Homeowners' Association which establish the methods and procedures of its operation, as such bylaws may be amended from time to time.

Section 2.7. "*Empire Estates Documents*" means the basic documents creating and governing Empire Estates, including, but not limited to, this Declaration, the Articles of Incorporation and Bylaws, the Design Guidelines and any other procedures, rules, regulations or policies adopted under such documents by the Empire Estates Homeowners' Association, all as may be amended from time to time.

Section 2.8. "*Empire Estates Homeowners' Association*" means the Empire Estates Homeowners' Association, Inc., a Montana nonprofit corporation, and any successor of that entity by whatever name.

Section 2.9. "*Empire Estates Rules*" means the rules and regulations adopted by the Empire Estates Homeowners' Association from time to time.

Section 2.10. "*Common Area*" means the twenty foot landscape buffer along the South and West boundaries of the Property and all of the areas shown as private roads and common areas, depicted on the Final Plat or Plats of Empire Estates, records of Flathead County, Montana and any other property in which the Empire Estates Homeowners' Association owns an interest for the common use, benefit and enjoyment of the Members.

Section 2.11. "*Common Expenses*" means (i) premiums for the insurance carried by the Empire Estates Homeowners' Association under Article XII; (ii) all other expenses incurred by the

Empire Estates Homeowners' Association in administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Area and any Improvements located on it; (iii) all expenses expressly declared to be Common Expenses by the Empire Estates Documents; (iv) all expenses lawfully determined to be Common Expenses by the Board of Directors; and (v) all expenses to be allocated among the Owners as provided in Article IX.

Section 2.12. "*Declarant*" means Wayne E. Turner, or his successors or assigns, including any Successor Declarant.

Section 2.13. "*Default Assessment*" means any Assessment levied by the Empire Estates Homeowners' Association pursuant to Section 9.6. below.

Section 2.14. "*Design Guidelines*" means the guidelines and rules published and amended and supplemented from time to time by the Architectural Review Committee.

Section 2.15. "*Development Rights*" is defined in Section 11.1.2.

Section 2.16. "*Improvement(s)*" means all buildings, parking areas, fences, walls, hedges, plantings, lighting, poles, driveways, roads, ponds, trails, gates, signs, changes in any exterior color or shape, excavation and all other site work, including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. "Improvement(s)" does not include turf, shrub, or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearances. "Improvement(s)" does include both original improvements and all later changes and improvements.

Section 2.17. "*Lot*" means a parcel of land designated as a lot on any Plat of the Property.

Section 2.18. "*Maintenance Fund*" means the fund created by Assessments and fees levied pursuant to Article IX below to provide the Empire Estates Homeowners' Association with the funds required to carry out its duties under this Declaration.

Section 2.19. "*Member*" means any person or entity holding membership in the Empire Estates Homeowners' Association.

Section 2.20. "*Owner*" means the owner of record (including Declarant, and including the most recent contract purchaser, but excluding all contract sellers), whether one or more persons or entities, of fee simple title to any Lot or, if the Lot is subject to one or more contracts for deed, the owner of the purchaser's interest in the most recent contract for deed, but "Owner" does not mean or refer to any person or entity who holds such interest merely as security for the performance of a debt or other obligation, including a mortgage or trust indenture, unless and until such person or entity has acquired fee simple title pursuant to foreclosure or other proceedings.

Section 2.21. "*Period of Declarant Control*" means 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 10 years later, or (b) the date on which the Declarant has sold 90% of the Lots in all of the Plats.

Section 2.22. "*Person*" (whether or not in capitalized form) means a natural person, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or combination of the foregoing.

Section 2.23. "*Plat*" means any survey or surveys of all or part of the Property, together with such other diagrammatic plans and information regarding the Property as may be required by applicable law, or as may be included in the discretion of Declarant, as each such survey may be amended and supplemented from time to time, and all as recorded in the office of the Clerk and Recorder for Flathead County, Montana.

Section 2.24. "*Property*" means and includes the property described on *Section 1.1* and initially subjected to this Declaration, and also refers to any additional real property that may be incorporated in the Project from time to time and made subject to these Covenants pursuant to the provisions of this Declaration.

Section 2.25. "*Special Assessment*" means an Assessment levied pursuant to Section 9.4.

Section 2.26. "*Special Declarant Rights*" is defined as set forth in Section 11.1 below.

Section 2.27. "*Successor Declarant*" means any party or entity to who Declarant assigns any or all of its rights, obligations or interest as Declarant, as permitted by Section 16.7 and evidenced by an assignment or deed of record in the office of the Clerk and Recorder of Flathead County, Montana, designating such party as a Successor Declarant, signed by the transferor and the transferee. Upon such recording, Declarant's rights and obligations under the Declaration will cease and terminate to the extent provided in such document, and all such rights and obligations shall be transferred to and assumed by the Successor Declarant to the extent provided in such document.

ARTICLE III EXPANSION AND PLAT

Section 3.1. *Development Rights.* Declarant reserves the right to exercise all Development Rights in connection with the Empire Estates subdivision in accordance with Article XI below.

Section 3.2. *Declaration of Lot Boundaries.* The boundaries of each Lot are delineated on the Plat, and each Lot is identified by the number noted on the Plat.

Section 3.3. *Plat.* The Plat will be filed for record in the office of the Clerk and Recorder of Flathead County, Montana. The Plat may be filed as a whole or as a series of Plats from time to time.

ARTICLE IV ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 4.1. *Membership.* Every Owner, by virtue of being an Owner, and for so long as he is an Owner, will be a Member of the Empire Estates Homeowners' Association. Membership will be appurtenant to and may not be separated from ownership of any Lot. No Owner, whether one or more persons, will have more than one membership per Lot owned, but all of the persons owning

each Lot will be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The Declarant shall be considered an Owner and shall be a Member of the Empire Estates Homeowners' Association with all of the same privileges of the other Owners and Members. For purposes of voting, the Declarant shall have one vote for each Lot owned by the Declarant. For purposes of assessments, the Declarant shall be exempt from all forms of assessments imposed pursuant to this Declaration.

Section 4.2. *Transfer of Membership.* An Owner may not transfer, pledge or alienate its membership in the Empire Estates Homeowners' Association in any way except upon the sale or encumbrance of his Lot, and then only to the purchaser or Mortgagee of his Lot.

Section 4.3. *Classes of Membership.* The Empire Estates Homeowners' Association will have one class of voting membership, composed of all Owners, including Declarant, except that the Declarant shall have such additional rights and responsibilities as expressly provided in this Declaration.

Section 4.4. *Voting Rights.* All Members will be entitled to vote on the Empire Estates Homeowners' Association matters on the basis of one vote for each Lot owned.

Section 4.5. *Appointment of Officers and Directors by Declarant.* Until the expiration of the Period of Declarant Control, Declarant will retain the exclusive powers to appoint, remove and replace Directors and officers of the Empire Homeowners' Association.

**ARTICLE V
POWERS AND DUTIES OF EMPIRE ESTATES
HOMEOWNERS' ASSOCIATION**

Section 5.1. *Empire Estates Homeowners' Association Management Duties.* Subject to the rights and obligations of Declarant as set forth in this Declaration, the Empire Estates Homeowners' Association will be responsible for the administration and operation of the Empire Estates. The Board of Directors will exercise for the Empire Estates Homeowners' Association all powers, duties and authority vested in or obligated to be taken by the Empire Estates Homeowners' Association and not reserved to Declarant or the other Members by this Declaration, or by other applicable law.

Section 5.2. *Common Area.*

5.2.1. *Conveyance by Declarant.* On or before the expiration of the period of Declarant Control, Declarant will convey to the Empire Estates Homeowners' Association, by written instrument recorded with the Clerk and Recorder of Flathead County, Montana, the Common Area located on the Property.

5.2.2. *Use of Common Area.* The Common Area generally is designated by this Declaration for the common use, benefit and enjoyment of the Owners and their families, tenants, employees, guests and invitees.

5.2.3. *Empire Estates Homeowners' Association's Responsibility for Common Area.* The Empire Estates Homeowners' Association, subject to the rights and obligations of the Owners

set forth in this Declaration, will be responsible for the management, maintenance and control of the Common Area.

5.2.4. *Association's Agreements Regarding Common Area.* The Empire Estates Homeowners' Association, acting through the Board of Directors, may grant easements, rights-of-way, leases, licenses and concessions through or over the Common Area without the independent approval by the Owners. Without limiting the generality of the foregoing, the Empire Estates Homeowners' Association may grant such rights to suppliers of utilities serving the Project or property adjacent to the Project, and to developers or owners of property adjacent to the Project for the purpose of accommodating minor encroachments onto the Common Area or other purposes that do not unreasonably interfere with the use and enjoyment of the Common Area by the Owners.

Section 5.3 *Water and Sanitary Sewer Facilities.*

5.3.1. *Sanitary Sewer Service.* Each Lot shall be served by the sanitary sewer system of the City of Kalispell, Montana. Each Owner shall be responsible for the operation, repair, maintenance, and replacement of all sewer facilities located on that Owner's Lot, including but not limited to, the service line running from the house to the sewer main located at or near the property line.

5.3.2. *Water Service.* Each Lot shall be served by the water system of the City of Kalispell, Montana. Each Owner shall be responsible for the operation, repair, maintenance, and replacement of all water facilities located on that Owner's Lot, including but not limited to, the service line running from the house to the shutoff valve located at or near the property line.

Section 5.4. *Delegation by Empire Estates Homeowners' Association.*

5.4.1. *Committees.* The Empire Estates Homeowners' Association may delegate any of its rights, duties or responsibilities to any committee or other entity (in addition to the Architectural Review Committee) that the Board may choose to form.

5.4.2. *Limitation.* Any delegation by the Board under this Section is subject to compliance with the Bylaws and the requirement that the Board, when so delegating, will not be relieved of its responsibilities under the Empire Estates Documents.

Section 5.5. *Roads and Streets.* Empire Estates shall be served primarily by City of Kalispell, Montana streets. However, the Empire Estates Homeowners' Association shall be responsible for maintaining all private roads within the Property, if any, except private driveways located within the Lots on the Property, which shall be the responsibility of the Owners of the Lot. Such maintenance will include repair and replacement of such private roads, as well as periodic maintenance of the surface and regular snow, ice, and trash removal from all private roads within the Property.

Section 5.6. *Books and Records.* The Empire Estates Homeowners' Association will make available for inspection by Owners and Mortgagees, upon request, during normal business hours or under other reasonable circumstances, current copies of the Empire Estates Documents, and the books, records, and financial statements of the Empire Estates Homeowners' Association prepared pursuant to the Bylaws.

Section 5.7. *Reserve Account.* The Empire Estates Homeowners' Association will establish and maintain an adequate Maintenance Fund from Annual Assessments levied pursuant to Section 9.3, below for maintenance, repair or replacement of the private roads and landscaping or Improvements located within the Common Area.

Section 5.8. *Successor to Declarant.* The Empire Estates Homeowners' Association will succeed to all of the rights, duties and responsibilities of the Declarant under this Declaration upon termination of the Period of Declarant Control.

ARTICLE VI ARCHITECTURAL REVIEW COMMITTEE

Section 6.1. *Committee.* There is hereby established an Architectural Review Committee, which will be responsible for the review and approval of all proposed Improvements on the Lots.

Section 6.2. *Committee Membership.* The Committee will be composed of three or more persons. All of the members of the Committee will be appointed, removed, and replaced by Declarant, in its sole discretion, until the expiration of the Period of Declarant Control or such earlier time as Declarant may elect to voluntarily waive this right by notice to the Empire Estates Homeowners' Association, and at that time the Board of Directors will succeed to Declarant's right to appoint, remove, or replace the members of the Committee.

Section 6.3. *Purpose and General Authority.* No Improvement will be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor will any construction, repair or reconstruction be commenced until plans for the Improvements have been approved by the Committee; provided, however, that Improvements that are completely within a building may be undertaken without such approval. The Owner shall submit a site plan and elevations showing the design, location, material, color and exterior finish of proposed Improvements to the Architectural Review Committee. All Improvements will be constructed only in accordance with approved plans.

Section 6.4. *Design Guidelines.* The Architectural Review Committee may publish Design Guidelines which set forth the procedures and criteria for review of Improvements to be constructed on any Lot, and for review of landscaping plans. Failure to follow procedures or criteria set forth in the current published Design Guidelines shall form an adequate basis for rejection of the submitted site plan and elevations; provided, however, that this requirement shall not be construed as preventing the Declarant or the Architectural Review Committee, at their option, from waiving or amending the Design Guidelines at any time or with respect to any application. Failure to follow such procedures or criteria set forth in the Design Guidelines shall also be deemed a breach of this Declaration by such Owner and shall entitle the Association or the Architectural Review Committee to exercise and pursue the rights and remedies provided herein with respect to such breach.

Section 6.5. *Failure to Act.* In the event the Architectural Review Committee fails to approve or disapprove such design, location, materials, color and exterior finish within thirty days after the detailed site plan and elevations have been submitted to it, approval shall not be required and such Owner shall be deemed in compliance with this Article. Any plans, elevations and proposals so approved, either expressly in writing or by the expiration of the thirty day

period hereinabove provided, shall then permit the Owner to commence construction in accordance with said plans and elevations, but any deviation from said plans and elevations which in the judgment of said Architectural Review Committee is a substantial detriment to the appearance of the structure or of the surrounding area shall be corrected to conform with the plans and elevations as submitted.

Section 6.6. *Committee Discretion.* The Committee will exercise its best judgment to see that all improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Lot, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Design Guidelines and the other Empire Estates Documents. The 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.

Section 6.7. *Binding Effect.* The actions of the Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, will be conclusive and binding on all interested parties.

Section 6.8. *Organization and Operation of Committee.*

6.8.1. *Term.* The term of office of each member of the Committee will be one year, commencing January 1 of each year, and continuing until his or her successor shall have been appointed. Should a Committee member die, retire or become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 6.2.

6.8.2. *Chairman.* So long as Declarant appoints the Committee, Declarant will appoint the chairman. At such time as the Committee is appointed by the Board of Directors, the chairman will be elected annually from among the members of the Committee by a majority vote of the members. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, an interim chairman.

6.8.3. *Operations.* The Committee chairman will take charge of and conduct all meetings and will provide for reasonable notice to each member of the Committee prior to any meeting. The notice will set forth the time and place of the meeting, and notice may be waived by any member.

6.8.4. *Voting.* The affirmative vote of a majority of the members of the Committee will govern its actions and be the act of the Committee.

Section 6.9. *Other Requirements.* Compliance with the Empire Estates architectural review process is not a substitute for compliance with City of Kalispell, Montana building, zoning and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

Section 6.10. *Enforcement.*

6.10.1 *Inspection.* Any member or authorized consultant of the Architectural

Review Committee, or any authorized officer, Director, employee or agent of the Empire Estates Homeowners' Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect Improvements constructed or under construction on the Lot to determine whether the Improvements have been or are being built in compliance with the Empire Estates Documents and the plans and specifications approved by the Architectural Review Committee.

6.10.2. *Deemed Nuisances.* Every violation of these Covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against Member will be applicable. Without limiting the generality of the foregoing, these Covenants may be enforced as provided below.

(i) *Fines for Violations.* The Committee may adopt a schedule of fines for failure to abide by the Committee rules and the Design Guidelines, including fines for failure to obtain any required approval from the Committee.

(ii) *Removal of Nonconforming Improvements.* The Empire Estates Homeowners' Association may, upon request of the Committee and after reasonable time after notice to the Owner, without being deemed guilty of trespass, remove any Improvement constructed, reconstructed, refinished, altered, or maintained in violation of these Covenants. The Owner of the Improvement will immediately reimburse the Empire Estates Homeowners' Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Empire Estates Homeowners' Association within 30 days after the Empire Estates Homeowners' Association gives the Owner notice of the expenses, the sum owed to the Empire Estates Homeowners' Association will bear interest at the maximum rate permitted under Montana law from the date the expense was incurred by the Empire Estates Homeowners' Association through the date of reimbursement in full, and all such sums and interest will be a Default Assessment enforceable as provided in Article IX.

Section 6.11. *Continuity of Construction.* All Improvements commenced on the Property will be prosecuted diligently to completion. If an Improvement is commenced and construction is then abandoned for more than ninety days, or if construction is not completed within the required twelve-month period described below in Section 7.7, then after notice and opportunity for hearing as provided in the Bylaws, the Empire Estates Homeowners' Association may impose a fine of not more than \$50.00 per day to be charged against the Owner of the Lot until construction is resumed, or the Improvements are completed, as applicable.

ARTICLE VII PROPERTY USE RESTRICTIONS

Section 7.1. *General Restriction.* The Property will be used only for the purposes set forth in these Covenants, as permitted by the applicable regulations of the City of Kalispell, Montana Flathead County, Montana and the laws of the State of Montana and the United States, and as set forth in the Empire Estates Documents or other specific recorded covenants affecting all or any part of the Property and no structure which fails to meet the following minimum standards shall be

erected, placed or allowed to remain on any Lot, and the Architectural Review Committee shall have no power to approve any structure failing to at least meet these minimum standards:

Section 7.2. *Setbacks.* All single family residences, duplexes, garages, sheds, kennels, swimming pools, outbuildings, and other structures of any kind or nature whatsoever shall be constructed and located entirely within the setbacks as set forth in the current City of Kalispell, Montana zoning regulations.

Section 7.3. *Height, Size, etc.* Upon obtaining the approval of the Architectural Review Committee, one single-family residence or duplex may be built on each Lot. No structure shall be erected, altered, placed, or permitted on any such Lot other than a single-family dwelling or duplex not to exceed two-stories and thirty five (35) feet in height, including a private garage, or outbuilding. For the purposes of these restrictions, "two-stories" shall mean two-stories above grade on at least one overall dimension of the structure, except "split-level" structures will be permitted. All single-story single-family residences shall contain at least 1,100 square feet on the main floor, exclusive of basements, porches, patios, and garages. All two-story or split-level single-family residences shall contain at least 900 square feet on the ground or main floor and 300 square feet on the second or upper floor, exclusive of basements, porches, patios, and garages. All single-story duplexes shall contain at least 900 square feet per unit, exclusive of basements, porches, patios and garages. All two-story or split-level duplexes shall contain at least 600 square feet on the main floor and 300 square feet on the second or upper floor, exclusive of basements, porches, patios and garages, per unit. All single family residences shall, at a minimum, have a two car garage measuring at least twenty four feet (24') by twenty four feet (24') and all duplexes shall, at a minimum, have a one car garage measuring at least twenty four feet (24') by sixteen feet (16') per unit. In addition to the foregoing, all single-family residences and duplexes must provide adequate off-street parking to meet the City of Kalispell requirements. Upon obtaining the approval of the Architectural Review Committee, outbuildings may be built on the Lots on the condition that they conform in appearance with the single-family residence or duplex.

Section 7.4. *New Construction.* All Improvements erected on any Lot shall be of new construction, and no mobile homes, trailers, or old buildings shall be placed or moved onto the Lots.

Section 7.5. *Maintenance Free Exterior.* All Improvements erected on any Lot shall be sided with and have a low maintenance exterior. All siding must be primarily horizontal siding. Siding, roofing and other exterior finish items must be approved by the Architectural Review Committee.

Section 7.6. *Roofing Materials.* All improvements shall be roofed with roofing materials rated as Class A or Class B by the National Fire Protection Association. Wood shake and metal roofing is not permitted.

Section 7.7. *Completed Construction.* No basement or structure on any Lot may be used for dwelling purposes until after its area, as defined by the foundation, has been completely enclosed according to the plans and until it has been substantially completed, with sanitary facilities and utilities permanently installed. No tent, shack, or other outbuilding may be used as a residence, temporarily or permanently. All construction, including landscaping, must be completed within twelve months from the commencement of construction.

Section 7.8. *Satellite Antennae, etc.* Television, radio, satellite dishes, or other antennae are permitted, but the location, height and size of such antennae must be approved by the Architectural Review Committee, which may impose a requirement that such appurtenances be screened from view.

Section 7.9. *Fences.* Fences, retaining walls and other types of screens shall not exceed six feet in height. All fences must be constructed of maintenance free material. The location, design, material and color of fences, walls and screens must be approved by the Architectural Review Committee.

Section 7.10. *Temporary Structures.* Trailers or other temporary living conveniences shall not be kept on Lots during construction.

Section 7.11. *Trash, Debris, etc.* No trash, debris, or organic waste shall be permitted to accumulate on any Lot or in any roadway adjacent thereto, and shall be promptly disposed of. No vacant Lot shall be used as a dumping ground or burial pit. Trash incinerators are not permitted. Outside trash and refuse cans and receptacles shall be screened from view by a structure approved by the Architectural Review Committee.

Section 7.12. *Signs.* Other than signs advertising Lots or residences for sale or rent or signs of a type and size approved by the Architectural Review Committee displayed to identify the address of the Owner or occupant of a residence, no sign, billboard or advertising structure of any kind shall be erected, used or maintained on any Lot.

Section 7.13. *Outbuildings.* All outbuildings, garages and secondary structures located on any Lot shall match the external design of the primary structure.

Section 7.14. *Outhouses.* No outhouse or privy shall be permitted or maintained on any Lot, except that a chemical toilet shall be permitted on a Lot during the time a residence is being constructed.

Section 7.15. *Wood Heat.* No structure shall be constructed on any Lot wherein wood heat is the primary heat source. No outdoor firewood stacks, piles or wood storage facility shall be kept or maintained on any Lot unless it is screened from view.

Section 7.16. *Hunting, etc.* No hunting, trapping or the discharge of any rifle, shotgun, pistol or other firearm shall be permitted on any Lot or in the Common Area.

Section 7.17. *Animals.* No swine, poultry, goats, horses, cows, livestock or other animals, other than ordinary household pets, shall be raised, kept or cared for on any of the Lots. No Owner shall raise or care for permitted pets on a commercial basis. No permitted pets shall be allowed off of the Owner's Lot unless in the immediate company of their Owner or such Owner's agents. No Owner shall have or keep any dog which barks or whines on a regular or continuous basis, or which otherwise creates an ongoing disturbance for any other Owner. The Board of Directors may at any time limit the number of ordinary household pets on any Lot, any

may withdraw permission for any ordinary household pet from any Owner who violates or abuses the restrictions set forth in this paragraph.

Section 7.18. *Landscaping.* The layout, design and installation of all landscaping, grasses, lawns or ground cover, except those in confined gardens or planters must be approved by the Architectural Review Committee. Each Owner shall plant and maintain at least one tree in the front yard. A timed, underground sprinkler system shall be installed on each Lot that irrigates the front yard and side yards to the midpoint of the primary structure. Sod or other approved ground cover shall be installed in the front yard and to the mid point of the side yards on each Lot. All yards and landscaping shall be maintained and shall not be allowed to become unsightly. Lawns shall be mowed on a regular basis. Undeveloped Lots must be mowed at least twice each year and may not be used as a dumping area for trimmings or grass clippings.

Section 7.19. *Noxious Weeds.* All weeds, including noxious weeds, shall be eradicated or controlled by Owners and all Owners shall fully comply with state and local law regarding the control and eradication of noxious weeds.

Section 7.20. *Commercial Activity.* Except as expressly provided herein, no Lot or any building or improvement erected thereon shall at any time be used for the purpose of any trade, profession, manufacturing or business of any description. Owners may operate professional or other low-impact home-based businesses from their Lot on the condition that it does not materially increase traffic within Empire Estates. No approved business operated from any Lot shall employ or engage more than two non-resident employees or independent contractors. Notwithstanding the foregoing, no Owner shall operate any daycare, pre-school or other child or person care facility on their Lot.

Section 7.21. *Nuisance.* No noxious or offensive activities shall be carried on, nor shall anything be done on any Lot that may become an annoyance or nuisance to the other Owners.

Section 7.22. *Vehicles.* No unlicensed, unsightly, or inoperative motor vehicles or equipment, bodies or parts thereof shall at any time be allowed to remain in public view or the view of adjoining Owners on any Lot or along the City of Kalispell streets or private roadways located within the Property. All commercial vehicles shall be parked or stored in a garage or outbuilding or otherwise screened from view.

Section 7.23. *Fuel Tanks.* No above or below ground fuel tanks shall be permitted on any Lot.

Section 7.24. *City Imposed Restrictions.* All conditions or restrictions imposed by the City of Kalispell during the subdivision process are hereby incorporated by reference.

ARTICLE VIII OWNER'S OBLIGATIONS FOR MAINTENANCE

Section 8.1. *Owner's Responsibility for Lot.* All maintenance of a Lot and the improvements located on it will be the sole responsibility of the Owner of the Lot. The Empire Estates Homeowners' Association will, in the discretion of the Board, assume the maintenance

responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner is not satisfactory. Before assuming the maintenance responsibilities, the Board will notify the Owner in writing of its intention to do so, and if the Owner has not commenced and diligently pursued remedial action within thirty days after the mailing of such written notice, then the Empire Estates Homeowners' Association will proceed. The expenses of the maintenance by the Board will be reimbursed to the Empire Estates Homeowners' Association by the Owner within thirty days after the Empire Estates Homeowners' Association notifies the Owner of the amount due, and any sum not reimbursed within that thirty day period will bear interest at the maximum rate permitted under Montana law from the date of the expenditure until payment in full.

Section 8.2. *Owner's Negligence.* If the need for maintenance, repair or replacement of any portion of the Common Area (including Improvements located on it) arises because of the negligent or willful act or omission of an Owner or his family member, guest, invitee or tenant, then the expenses incurred by the Empire Estates Homeowners' Association for the maintenance, repair or replacement will be a personal obligation of that Owner. If the Owner fails to repay the expenses incurred by the Empire Estates Homeowners' Association within thirty days after the notice to the Owner of the amount owed, then those expenses will bear interest at the maximum rate permitted under Montana law from the date of the advance by the Empire Homeowners' Association until payment by the responsible Owner in full.

ARTICLE IX ASSESSMENTS

Section 9.1. *Creation of Lien and Personal Obligation for Assessments.* Except as otherwise provided by this Declaration, Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by accepting a deed for a Lot, is deemed to covenant to pay to the Empire Estates Homeowners' Association (1) the Annual Assessments imposed by the Board of Directors as necessary to generally carry out the functions of the Empire Estates Homeowners' Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (3) Default Assessments which may be assessed against a Lot pursuant to the Empire Estates Documents for the Owner's failure to perform an obligation under the Empire Estates Documents or because the Empire Estates Homeowners' Association has incurred an expense on behalf of or caused by the Owner under the Empire Estates Documents.

Notwithstanding the ownership of any Lot, the Declarant shall not be obligated to pay any of the Assessments described in this Declaration.

All Assessments, together with fines, interest, costs, and reasonable attorneys' fees, will be a charge on the land and will be a continuing lien upon the Lot against which each such Assessment is made until paid.

Each such Assessment, together with fines, interest, costs, and reasonable attorneys' fees and costs, will also be the personal and individual obligation of the Owner of such Lot as of the time the Assessment falls due, and two or more Owners of a Lot will be jointly and severally liable for such obligations. No Owner may exempt himself from liability for any Assessments by abandonment of his Lot or by waiver of the use or enjoyment of the Common Area. Suit to recover a money judgment for unpaid Assessments and related charges as listed above may be maintained without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 9.2. *Purpose of Assessments.* The Assessments levied by the Empire Estates Homeowners' Association will be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Empire Estates.

Section 9.3. *Annual Assessments.*

9.3.1. *Calculation of Annual Assessments.* The Board of Directors will prepare a budget before the close of each fiscal year of the Empire Estates Homeowners' Association. Annual Assessments for Common Expenses will be based upon the estimated net cash flow requirements of the Empire Estates Homeowners' Association to cover items including, without limitation, the cost of routine maintenance, repair and operation of the Common Area; and premiums for insurance coverage as deemed desirable or necessary by the Empire Estates Homeowners' Association; snow removal, landscaping, care of grounds and common lighting within the Common Area; routine renovations within the Common Area; wages; common water and utility charges for the Common Area; legal and accounting fees; expenses and liabilities incurred by the Empire Homeowners' Association under or by reason of this Declaration; payment of any deficit remaining from a previous Assessment period; and the supplementing of the reserve fund for general, routine maintenance, repairs and replacement of improvements within the Common Area on a periodic basis, as needed.

9.3.2. *Apportionment of Annual Assessments.* Except as otherwise provided herein, each Owner will be responsible for that Owner's share of the Common Expenses, which will be divided equally among the Lots included in the Project under this Declaration from time to time. Accordingly, at any given time, an Owner's share of Common Expenses will be determined as a fraction, the numerator of which is the number of Lots owned by the Owner, and the denominator of which is the number of Lots then platted and incorporated into the Project.

9.3.3. *Collection.* Annual Assessments will be collected in periodic installments as the Board may determine from time to time, but until the Board directs otherwise, they will be payable annually in advance on the date determined by the Board. The omission or failure of the Empire Estates Homeowners' Association to fix the Annual Assessments for any Assessment period will not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same.

Section 9.4. *Special Assessments.*

9.4.1. *Determination by Board.* The Board of Directors may levy, in any fiscal year, one or more Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, or, after adopting and submitting a revised budget to the Empire Estates Homeowners' Association as may be required to make up any shortfall in the current year's budget.

9.4.2. *Apportionment and Collection of Special Assessments.* The Board will apportion Special Assessments among the Lots and collect payment according to the same guidelines as set forth for Annual Assessments in Section 9.3.2.

9.4.3. *Notice.* Notice of the amount and due dates for such Special Assessments must be sent to each Owner at least 30 days prior to the due date.

Section 9.5. *Default Assessments.* All monetary fines, penalties, interest or other charges or fees (excluding Annual and Special Assessments) levied against an Owner pursuant to the Empire Estates Documents, or any expense of the Empire Estates Homeowners' Association which is the obligation of an Owner or which is incurred by the Empire Estates Homeowners' Association on behalf of the Owner pursuant to the Empire Estates Documents, and any expense (including without limitation attorneys' fees and costs) incurred by the Empire Estates Homeowners' Association as a result of the failure of an Owner to abide by the Empire Estates Documents, constitutes a Default Assessment, enforceable as provided in this Declaration below.

Section 9.6. *General Remedies of Empire Estates Homeowners' Association for Nonpayment of Assessment.* Any installment of an Annual Assessment, Special Assessment or Default Assessment which is not paid within 30 days after its due date will be delinquent. In the event that an installment of an Annual Assessment or Special Assessment becomes delinquent, or in the event any Default Assessment is established under this Declaration, the Empire Estates Homeowners' Association, in its sole discretion, may take any or all of the following actions:

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

9.6.2. Charge interest from the date of delinquency at the maximum rate permitted under Montana law;

9.6.3. Suspend the voting rights of the Owner during any period of delinquency;

9.6.4. 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;

9.6.5. Bring an action at law against any Owner personally obligated to pay the delinquent Assessment charges;

9.6.6. File a lien with the Flathead County Clerk and Recorder with respect of the Lot and foreclose as set forth in more detail below.

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

Section 9.7. *Assessment Lien.* Any Assessment chargeable to a Lot will constitute a lien on the Lot, effective the due date of the Assessment. To evidence the lien, the Empire Estates Homeowners' Association may, but will not be obligated to, prepare 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 Empire Estates Homeowners' Association, and the delinquent Assessment amounts then owing. Any such statement will be duly signed and acknowledged by an officer or Director of the Empire Estates Homeowners' Association and will be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Empire Estates Homeowners' Association may have in its records for the Owner. At least ten days after the Empire Estates Homeowners' Association mails the statement to the Owner, the Empire Estates Homeowners' Association may record the statement in the office of the Clerk and Recorder of Flathead County, Montana. Thirty

days following the mailing of such notice to the Owner, the Empire Estates Homeowners' Association may proceed to foreclose the lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Montana.

Section 9.8. *Successor's Liability for Assessment.* All successors to the fee simple title of a Lot, except as provided in Section 9.9, will be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' and legal assistants' fees against such Lot without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor.

Section 9.9. *Exempt Property.* The following portions of the Property will be exempt from the Assessments, charges, and liens created under this Declaration:

9.9.1. Any easement or other interest in the Property dedicated and accepted by the City of Kalispell or Flathead County and devoted to public use;

9.9.2. Any Lot owned by Declarant;

9.9.3. All utility lines and easements; and

9.9.4. Common Areas.

Section 9.10. *Statement of Status of Assessments.* The Empire Estates Homeowners' Association will furnish to an Owner or his designee or to any Mortgagee, within fourteen days of request, a statement setting forth the amount of unpaid Assessments then levied against the Lot in which the Owner, designee or Mortgagee has an interest.

Section 9.11. *Failure to Assess.* The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Empire Estates Homeowners' Association.

ARTICLE X PROPERTY RIGHTS OF OWNERS

Section 10.1. *Owner's Easements of Access and Enjoyment.* Every Owner has a perpetual, non-exclusive easement for ingress, egress and utilities to and from his Lot and for the use and enjoyment of the Common Area, which easement is appurtenant to and will pass with the title to every Lot, subject to the provisions set forth in this Declaration.

Section 10.2. *Easements of Record and of Use.* The Property will be subject to all easements shown on any recorded Plat and to any other easements of record or of use as of the date of recordation of this Declaration.

ARTICLE XI SPECIAL DECLARANT RIGHTS

AND ADDITIONAL RESERVED RIGHTS

Section 11.1. *General Provisions.* Until the expiration of the Period of Declarant Control, Declarant will have the following Special Declarant Rights:

11.1.1. *Completion of Improvements.* The right to complete infrastructure and Improvements as indicated on any Plat filed with respect to the Property.

11.1.2. *Development Rights.* The right to exercise all Development Rights in connection with the development of the Empire Estates Project, including without limitation the right or combination of rights hereby reserved by Declarant, as follows:

- (i) The right to create Lots and Common Area on the Property.
- (ii) The right to subdivide Lots and convert Lots into Common Area on any part of the Property.
- (iii) The right to withdraw real estate from Empire Estates.

11.1.3. *Sales Activities.* The right to maintain sales and management offices, signs advertising Empire Estates and model residences on the Common Area and on Lots owned by Declarant.

11.1.4. *Easements.* The right to use easements through the Common Area on the Property for the purpose of making Improvements on the Property.

11.1.5. *Association Directors and Officers.* The right to appoint any officer or Director of the Empire Estates Homeowners' Association, as provided in this Declaration or the Bylaws.

11.1.6. *Order of Exercise of Declarant's Rights.* Declarant makes no representations and gives no assurances regarding the legal description of the boundaries of any phase of the Property or the order or time in which the phases of the Property may be developed or incorporated in the Empire Estates, or whether or to what extent any of the Property will be developed or incorporated into the Project. Further, the fact that Declarant may exercise one or more of Declarant's Development Rights or other Special Declarant Rights on one portion of the Property will not operate to require Declarant to exercise a Development Right or other Special Declarant Right with respect to any other portion of the Property.

Section 11.2. *Supplemental Provisions Regarding Declarant's Rights.* Without limiting the generality of the foregoing, certain of these Special Declarant Rights are explained more fully in this Article below. Further, Declarant reserves the right to amend this Declaration and any Plat in connection with the exercise of any Development Right or any other Special Declarant Right, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.

Section 11.3. *Utility Easements.* There is hereby created an easement upon, across, over, in, and under the Common Area, the public roadways, the private roadways and the areas designated on the final Plat of Empire Estates as utility easements for the installation, replacement, repair and

maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electrical, television and other communications systems. By virtue of this easement, it will be expressly permissible and proper for the companies providing utility services to install and maintain necessary equipment on and under the Common Area, the private roadways and the areas designated on the final Plat of Empire Estates as utility easements and to affix and maintain utility pipes, wires, circuits, conduits and other equipment under those areas. Any utility company using this easement will use its best efforts to install and maintain the utilities provided for without disturbing the uses of the Owners, the Empire Estates Homeowners' Association and Declarant; will prosecute its installation and maintenance activities as promptly and expeditiously as reasonably possible; and will restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the easement granted above request a specific easement by separate recordable document, either Declarant or the Empire Estates Homeowners' Association will have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Common Area, the private roadways and the areas designated on the final Plat or Plats of Empire Estates as utility easements without conflicting with the terms of this Declaration. This easement will in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 11.4. *Reservation for Expansion and Construction.* Declarant hereby reserves for itself and its successors and assigns and for Owners in all future phases of Empire Estates, a perpetual easement and right-of-way for access over, upon, and across the Property for construction, utilities, drainage, ingress and egress, and for use of the Common Area. The location of these easements and rights-of-way may be made certain by Declarant or the Empire Estates Homeowners' Association by instruments recorded in Flathead County, Montana.

Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility, ingress and egress, and other easements over and across the Common Areas, and to create other reservations, exemptions, and exclusions convenient or necessary for the use and operation of any other property of Declarant.

Section 11.5. *Reservation of Easements, Exceptions, and Exclusions for Utilities, Infrastructure, and Access.* Declarant reserves for itself and its successors and assigns and hereby grants to the Empire Estates Homeowners' Association, acting through the Board of Directors, the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area, for purposes including but not limited to streets, paths, walkways, drainage, recreational areas and parking areas, and to create other reservations, exceptions, and exclusions in the interest of the Owners and the Empire Estates Homeowners' Association.

Section 11.6. *Maintenance Easement.* An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Empire Estates Homeowners' Association, and any member of the Board of Directors, and their respective officers, agents, employees, and assigns, upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Empire Estates Homeowners' Association is obligated or permitted to perform pursuant to the Empire Estates Documents.

Section 11.7. *Drainage Easement.* An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Empire Estates Homeowners' Association, its

officers, agents, employees, successors and assigns to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water. Reasonable efforts will be made to use this easement so as not to disturb the uses of the Owners, the Empire Estates Homeowners' Association and Declarant, as applicable, to the extent possible; to prosecute such drainage work promptly and expeditiously; and to restore any areas affected by such work to a slightly and usable condition as soon as reasonably possible following such work.

Section 11.8. *Declarant's Rights Incident to Construction.* Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights will be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his family, tenants, employees, guests, or invites.

Section 11.9. *Easements Deemed Created.* All conveyances of Lots hereafter made, whether by Declarant or otherwise, will be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

ARTICLE XII INSURANCE

Section 12.1. *Authority to Purchase.* All insurance policies relating to the Common Area will be purchased by the Board of Directors or its duly authorized agent. The Board of Directors and the Declarant will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable costs.

Section 12.2. *General Insurance Provisions.* All such insurance coverage obtained by the Board of Directors will be governed by the following provisions:

12.2.1. As long as Declarant owns any Lot, Declarant will be protected by all such policies in the same manner as any other Owner.

12.2.2. The deductible, if any, on any insurance policy purchased by the Board of Directors may be treated as a Common Expense payable from Annual Assessments or Special Assessments (allocable to all of the Lots or to only some of the Lots, if the claims for damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners), or as an item to be paid from working capital reserves established by the Board of Directors.

Section 12.3. *Physical Damage Insurance on Common Area.* The Empire Estates Homeowners' Association will obtain insurance for such insurable Improvements and with such coverages, limits, deductibles and other terms and conditions as the Board may determine from time to time.

Section 12.4. *Liability Insurance.* The Empire Estates Homeowners' Association will obtain a comprehensive policy of public liability insurance and property damage insurance with such coverages and limits as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Empire Homeowners' Association, and the respective employees, agents, and all persons acting as agents against any liability to the public or the Owners (and their guests, invites, tenants, agents, and employees) arising in connection with the ownership, operation, maintenance or use of the Common Area and streets and roads within Empire Estates and any other areas under the control of the Empire Estates Homeowners' Association. Declarant will be included in the coverage as an additional insured in Declarant's capacity as an Owner or Director.

ARTICLE XIII ENFORCEMENT OF COVENANTS

Section 13.1. *Violations Deemed a Nuisance.* Every violation of this Declaration or any other violation of the Empire Estates Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of these Covenants will be available.

Section 13.2. *Compliance.* Each Owner or other occupant of any part of the Property will comply with the provisions of the Empire Estates Documents as the same may be amended from time to time.

Section 13.3. *Failure to Comply.* Failure to comply with the Empire Estates Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws will be given to the delinquent party prior to commencing any legal proceedings.

Section 13.4. *Who may Enforce.* Any action to enforce the Empire Estates Documents may be brought by Declarant or the Board in the name of the Empire Estates Homeowners' Association on behalf of the Owners. If, after a written request from an aggrieved Owner, none of the foregoing persons or entities commences an action to enforce the Empire Estates Documents, then the aggrieved Owner may bring such an action.

Section 13.5. *Nonexclusive Remedies.* All the remedies set forth herein are cumulative and not exclusive.

Section 13.6. *No Waiver.* The failure of the Board of Directors, Declarant, or any aggrieved Owner to enforce the Empire Estates Documents in any one or more instances will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Empire Estates Documents at any future time.

Section 13.7. *No Liability.* No member of the Board of Directors, the Declarant or any Owner will be liable to any other Owner for the failure to enforce any of the Empire Documents at any time.

Section 13.8. *Recovery of Costs.* If legal assistance is obtained to enforce any of the provisions of the Empire Estates Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Empire Estates Documents or the restraint of violations of the Empire Estates Documents, the prevailing party will be entitled to recover all costs

incurred by it in such action, including reasonable attorneys' fees (and legal assistant's fees) as may be incurred, or if suit is brought, as may be determined by the court.

**ARTICLE XIV
RESOLUTION OF DISPUTES**

If any dispute or question arises between Members or between Members and the Empire Estates Homeowners' Association or relating to the interpretation, performance or nonperformance, violation, or enforcement of the Empire Estates Documents, such dispute or violation may be subject to a hearing and determination by the Board in accordance with the procedures set forth in the Bylaws.

**ARTICLE XV
DURATION OF THESE COVENANTS AND AMENDMENT**

Section 15.1 *Term.* This Declaration and any amendments or supplements hereto will remain in effect from the date of recordation until the 30th anniversary of the date this Declaration is first recorded in the office of the Clerk and Recorder of Flathead County, Montana. Thereafter these Covenants will be automatically extended for five successive periods of 10 years each, unless otherwise terminated or modified as provided below.

Section 15.2. *Amendment.* Subject to Section 15.3, this Declaration, or any provision of it, may be terminated, extended, modified or amended, or revoked as to the whole or any portion of the Property as follows:

15.2.1. *Prior to Sale of Lots.* Prior to the sale of any Lot, the Declarant (including a Successor Declarant) may terminate, extend, modify, amend or revoke this Declaration as to the whole or any portion of the Property by recording in the records of Flathead County, Montana, a document signed by the Declarant stating the action taken.

15.2.2. *After Sale of Lots but During Period of Declarant Control.* After the sale of a Lot but before expiration of the Period of Declarant Control, Declarant (including any Successor Declarant) may terminate, extend, modify, amend or revoke this Declaration as to the whole or any portion of the Property. A copy of the document stating the action intended to be taken by the Declarant and a notice of the Owners' rights under this Section shall be mailed to each Owner by first class mail, postage prepaid, to the address of the Owner on the records of Empire Estates Homeowners' Association. Unless written objection is received by the Declarant from the Owners holding 80% or more of the votes within 30 days of the mailing of the notice to the Owners, the action proposed to be taken by the Declarant shall be considered approved and shall become final. The Declarant shall then record in the records of Flathead County, Montana, a document stating the action taken, together with a certificate certifying that notice was given to the Owners as required herein and that fewer than 80% of the Owners objected to the action.

15.2.3. *After the Period of Declarant Control.* After the Period of Declarant Control, this Declaration, or any provision of it, may be terminated, extended, modified or amended, or revoked as to the whole or any portion of the Property upon the written consent of Owners holding

67% or more of the votes in the Empire Estates Homeowners' Association. Any document will be immediately effective upon recording in the records of Flathead County, Montana, a copy of such executed and acknowledged by the necessary number of Owners, or alternatively, upon the recording in the records of Flathead County, Montana, of a copy of the document together with a certificate signed by an officer of the Empire Estates Homeowners' Association stating that the required number of consents of Owners were obtained.

Section 15.3. *Declarant's Approval.* Notwithstanding the provisions of Section 15.2, no termination, extension, modification or amendment of this Declaration will be effective in any event during the Period of Declarant Control unless the written approval of Declarant is first obtained.

Section 15.4. *Effect of Amendments.* Amendments made pursuant to this Section will inure to the benefit of and be binding upon all Owners, their families, guests, invitees and employees, and their respective heirs, successors, and assigns. Joinder of the First Mortgagees shall not be required in order to effect an amendment.

ARTICLE XVI MISCELLANEOUS PROVISIONS

Section 16.1. *Severability.* This Declaration, to the extent possible, will be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

Section 16.2. *Construction.* In interpreting words in this Declaration, unless the context will otherwise provide or require, the singular will include the plural, the plural will include the singular, and the use of any gender will include all genders.

Section 16.3. *Headings.* The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of this Declaration.

Section 16.4. *Waiver.* No failure on the part of the Empire Estates Homeowners' Association or the Board to give notice or default or to exercise or to delay in exercising any right or remedy will operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver will be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Empire Estates Homeowners' Association.

Section 16.5. *Limitation of Liability.* Neither the Declarant, the Empire Estates Homeowners' Association nor any partner, officer or member of either the Declarant or the Board will be liable to any party for any action or for any failure to act with respect to any matter arising by, through, or under the Empire Estates Documents if the action or failure was made in good faith. The Empire Estates Homeowners' Association will indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.

Section 16.6. *Conflicts Between Documents.* In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration will control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

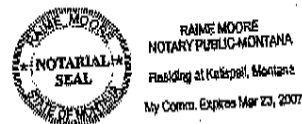
Section 16.7. *Assignment.* Declarant may assign all or any part of the Special Declarant Rights or any of Declarant's other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Clerk and Recorder of Flathead County, Montana.

IN WITNESS WHEREOF, Declarant has signed this Declaration on the Date shown above.

Wayne E. Turner
Wayne E. Turner

STATE OF MONTANA)
) ss
County of Flathead)

This instrument was acknowledged before me on this 9th day of June, 2004, by Wayne E. Turner.



Rainie Moore
Notary Public for the State of Montana
Residing at Kalispell, Montana
My commission expires April 1, 2004

STATE OF MONTANA)
) ss.
County of Flathead)

Recorded at the request of the Law Office of Vincent G. Rieger, P.C. this 9 day of June, 2004, at 2:17 o'clock P.m. and recorded in the records of Flathead County, State of Montana.

Fee \$ 138⁰⁰ Pd.

Paula Rasmuson
Flathead County Clerk and Recorder

Reception No. 200416112170 Theresa Anderson
Deputy

After recording please return to:
Vincent G. Rieger
Law Office of Vincent G. Rieger, P.C.
4 Meridian Court
Kalispell, MT 59901

Return to:
Wayne E. Turner
3300 Hwy 2 W.
Kal MT 59901

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1ST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR EMPIRE ESTATES

This Amendment (the "Amendment") to the Declaration of Covenants, Conditions, Restrictions and Easements for Empire Estates (the "Covenants") is made this 29 day of September 2005, by Wayne E. Turner, (hereinafter the "Declarant"),

WITNESSETH:

WHEREAS, Covenants for the subdivision known as Empire Estates were recorded on June 9, 2004, Instrument No. 2004-161-12170 of Flathead County Official Records; and

WHEREAS, Section 15.2.2 of said Covenants provide for amendment during the Period of Declarant Control if fewer than 80% of the Owners object to the action; and

WHEREAS, the Declarant desires to amend said Covenants.

NOW THEREFORE, pursuant to the powers reserved by the Declarant in the Covenants:

1. Certification. The Declarant hereby certifies that the notice prescribed by Section 15.2.2 of the Covenants was provided to the Owners and that less than eighty percent (80%) of the owners objected to the proposed modification of the Declaration within thirty (30) days of mailing of the notice.

2. Modification 1. Section 7.3 of the Covenants are hereby modified to read:

Section 7.3. Height, Size, etc. Upon obtaining the approval of the Architectural Review Committee, one single-family residence or duplex may be built on each Lot. No structure shall be erected, altered, placed, or permitted on any such Lot other than a single-family dwelling or duplex not to exceed two-stories and thirty five (35) feet in height, including a private garage, or outbuilding. For the purposes of these restrictions, "two-stories" shall mean two-stories above grade on at least one overall dimension of the structure, except "split-level" structures will be permitted. All single-story single-family dwellings shall contain at least 1,100 square feet on the main floor, exclusive of porches, patios, and garages. All two-story or split-level dwellings shall contain at least 900 square feet on the ground or main floor and 300 square feet on the second or upper floor, exclusive of porches, patios, and garages. All single story multi-family or duplex dwellings shall contain at least 900 square feet on the main floor, exclusive of porches, patios, and garages. All two story or split-level multi-family or duplex structures shall contain 600 square feet on the ground or main floor and 300 square feet on the second or upper floor. All single family residences shall, at a minimum, have two car garage measuring at least five hundred seventy six (576) feet and all duplexes shall, at a minimum, have a one car garage measuring at least three hundred eighty four (384) square feet per unit. All structures must provide adequate parking to meet City of Kalispell requirements. Upon obtaining the approval of the Architectural Review Committee, outbuildings may be built on the Lots on the condition that they conform in appearance with the single-family residence or duplex.

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3. Modification 2. Section 7.7 of the Covenants are hereby modified to read:

Section 7.7. *Completed Construction.* No basement or structure on any Lot may be used for dwelling purposes until after its area, as defined by the foundation, has been completely enclosed according to the plans and until it has been substantially completed, with sanitary facilities and utilities permanently installed. No tent, shack, or other outbuilding may be used as a residence, temporarily or permanently. All construction must be completed within twelve months from the commencement of construction. All landscaping must be completed within the same calendar year as completion of construction, unless construction is not completed before September 1st. In this case landscaping must be completed by July 1st of the following year.

4. Modification 3. Section 7.25 is hereby added and shall read:

Section 7.25 *Utility Services.* Within two (2) years of the completion of construction all residences must initiate both land line telephone service and natural gas service.

5. Modification 4. Section 4.6 is hereby added and shall read:

Section 4.6 *Owner's and Association's Addresses for Notices.* All Owners of each of each Lot will have one and the same registered mailing address and telephone number to be used by the Empire Estates Homeowners' Association or other Owners for notices, demands and all other communication for Empire Estates Homeowners' Association Matters. The Owner or Owners of a Lot will furnish the registered address and telephone number to the Empire Estates Homeowners' Association within five days of receiving title the Lot. The registration will be in written form and signed by all of the Owners of the Lot or by such persons as are authorized by law to represent the interests of all Owners of the Lot.

If no address or telephone number is registered or if all of the Owners cannot agree, then the address of the Lot will be deemed the registered address until another address is furnished as required under this Section.

If the address of the lot is the registered address of the Owners, then any notice will be deemed duly if delivered to any person occupying the Lot, conspicuously posted on the Lot, or sent to the Lot by any other means specified in any of the Empire Estates Documents. If the Lot is unoccupied the notice will be held and available at the Empire Estates Homeowners' Association. All notices and demands intended to be served upon the Empire Estates Homeowners' Association will be sent to the address of the Empire Estates Homeowners' Association or such other address as the Board may designate from time to time by a notice delivered to all Owners in accordance with the Empire Estates Documents.

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All notices given under this Declaration will be sent by personal delivery, which will be effective upon receipt; by overnight courier service, which will be effective on business day following timely deposit with a courier service; or by regular, registered or certified mail, postage prepaid, which will be effective three days after deposit in the U.S. mail.

IN WITNESS WHEREOF, the Declarant has set his hand and sealed the day and year first above written.

SIGNED, SEALED AND ACKNOWLEDGED

Wayne E. Turner
Wayne E. Turner (Declarant) *Att'y in Fact*

9/29/05
Date

STATE OF MONTANA)
County of Flathead) ss

This instrument was acknowledged before me on this 29 day of SEPT, 2005, by Wayne E. Turner, Hubert J. Turner, as attorney in fact for Wayne E. Turner

Theresa Moore
Notary Public for the State of Montana
Residing at Kalispell
My commission expires 3-23-2005



TERESA MOORE
NOTARY PUBLIC-MONTANA
Residing at Kalispell, Montana
My Comm. Expires Mar 23, 2005

STATE OF MONTANA)
County of Flathead)