

RESTATED DECLARATION  
OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR

IRON HORSE

This Restated Declaration of Covenants, Conditions, Restrictions and Easements for Iron Horse (this "Declaration") is made this 1st day of March 1999, by IRON HORSE AT WHITEFISH, LLC, a Montana limited liability company (sometimes called the "Company" in this Declaration). Iron Horse at Whitefish, LLC is the owner of all of the property which is subject to this Declaration and is the successor Declarant to WHITEFISH INVESTORS under the original Declaration of Covenants, Conditions, Restrictions and Easements for Iron Horse dated April 6, 1998, and recorded in the records of Flathead County, Montana on June 25, 1998, under Reception No. 199817610540 (the "original Declaration"). This Restated Declaration of Covenants, Conditions, Restrictions and Easements for Iron Horse supercedes in its entirety the original Declaration, and the original Declaration shall be of no further force or effect.

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

Section 1.1. *Owner.* The Company is the owner of the property in Flathead County, Montana, described on the attached *Exhibit A* (the "Property").

Section 1.2. *Purpose.* The purpose of the Company in making this Declaration is to create a planned community known as Iron Horse on the Property (the "Project" or "Iron Horse").

The Company 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. *Right to Expand.* The Company also now owns or may in the future own additional real estate in Flathead County, Montana, which it may desire to incorporate into the Iron Horse Project (the "Expansion Property"), and the Company has reserved the right, but will not be obligated, to incorporate the Expansion Property in whole or in part in the regime established under this Declaration, all as provided in Article XVII below, so that the Expansion Property, if and when developed, will be treated as an integral part of the single planned community of Iron Horse.

Section 1.4. *Development and Use.* Upon completion, Iron Horse will consist of a maximum of 456 Lots.

Section 1.5. *Imposition of Covenants.* To accomplish the purposes indicated above, the Company hereby declares that from the date of recording this Declaration forward, the Property will constitute a planned community known as Iron Horse, 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.

## ARTICLE II DEFINITIONS

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

Section 2.1. *"Annexation"* means the process by which portions of the Expansion Property are made subject to this Declaration pursuant to Article XVII below.

Section 2.2. *"Annual Assessment"* means the Assessment levied annually pursuant to Section 9.3.

Section 2.3. *"Articles" or "Articles of Incorporation"* means the articles of incorporation of the Iron Horse Homeowners Association, Inc., which have been filed with the Secretary of State of Montana, 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 Iron Horse Association.

Section 2.5. *"Board of Directors" or "Board"* means the Board of Directors of the Iron Horse Association.

Section 2.6. *"Building"* means a building or other structure constructed in a Lot.

Section 2.7. *"Building Site"* means the building envelope or area within a Lot delineating the boundaries within which a Building or other Improvement may be located, always subject to the prior written approval of the Design Review Committee.

Section 2.8. *"Bylaws"* means the bylaws of the Iron Horse Association which establish the methods and procedures of its operation, as such bylaws may be amended from time to time.

Section 2.9. *"Club"* shall mean Iron Horse Golf Club, Inc., a Montana not-for-profit corporation, which shall own and operate the Club Property.

Section 2.10. "*Club Property*" shall mean all of the real property owned by the Club or its successors or assigns plus all of the recreational and social facilities constructed thereon, which will be operated by the Club or its successors or assigns and commonly known as the Iron Horse Golf Club, including without limitation, the golf course, the golf clubhouse, golf practice facilities, tennis courts, swimming pool and any other recreational facilities offered by the Club. THE CLUB PROPERTY IS NOT A COMMON AREA .

Section 2.11. "*Common Area*" means any real property described in the attached *Exhibit B* and any other property in which the Iron Horse Association owns an interest for the common use, benefit and enjoyment of some or all of the Members and such other persons as may be permitted to use the Common Area under the terms of this Declaration or any contract with the Iron Horse Association. Such interest owned by the Iron Horse Association may include, without limitation, estates in fee, estates for terms of years, or easements.

Declarant may, but will not be obligated to, include among the Common Area parcels of real estate for use as one or more trail system, other amenities and open space areas.

Section 2.12. "*Common Expenses*" means (i) premiums for the insurance carried by the Iron Horse Association under Article XIII; (ii) all other expenses incurred by the Iron Horse 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 Iron Horse 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 2.13. "*Declarant*" means Iron Horse at Whitefish, LLC, a Montana limited liability company, or its successors or assigns, including any Successor Declarant to the extent the rights of Declarant are assigned to the Successor Declarant, as provided in Section 2.48.

Section 2.14. "*Declaration of Annexation*" means a declaration prepared and recorded in accordance with the provisions of Article XVII to incorporate Expansion Property within the Property governed by this Declaration.

Section 2.15. "*Default Assessment*" means any Assessment levied by the Iron Horse Association pursuant to Section 9.6 below.

Section 2.16. "*Default Rate*" means an annual rate of interest that is the lesser of (i) five points above the prime rate charged by the Iron Horse Association's bank, and (ii) the maximum rate permitted by applicable law.

Section 2.17. "*Design Guidelines*" means the guidelines and rules published and amended and supplemented from time to time by the Design Review Committee.

Section 2.18. "*Design Review Committee*" or "*Committee*" means the committee formed pursuant to Article VI to maintain the quality and architectural harmony of Improvements in Iron Horse.

Section 2.19. "*Development Rights*" is defined in Section 11.1.2.

Section 2.20. "*Director*" means a member of the Board.

Section 2.21. "*Dwelling Unit*" means a dwelling unit as defined in the Master Plan.

Sections 2.22 and 2.23 [Reserved]

Section 2.24. "*Expansion Property*" means such additional real property now owned or in the future acquired by Declarant (including any Successor Declarant) as Declarant may make subject to the provisions of this Declaration, by duly recorded Declaration of Annexation.

Section 2.25. "*First Mortgage*" means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

Section 2.26. "*First Mortgagee*" means the holder of record of a First Mortgage.

Section 2.27. "*Improvement(s)*" means all Buildings, parking areas, loading areas, fences, walls, hedges, plantings, lighting, poles, driveways, roads, ponds, lakes, 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 2.28. "*Lot*" means a parcel of land designated as a lot on any Plat of the Property or of any Expansion Property which the Declarant makes subject to this Declaration, or a condominium unit located on the Property or any Expansion Property which the Declarant makes subject to this Declaration. Each individual condominium unit within a condominium shall be considered a separate Lot. The streets, roads, and Common Areas on any Plat shall not be considered to be separate Lots.

Section 2.29. "*Maintenance Fund*" means the fund created by Assessments and fees levied pursuant to Article IX below to provide the Iron Horse Association with the funds required to carry out its duties under this Declaration.

Section 2.30. "*Manager*" means such person or entity retained by the Board of Directors to perform certain functions of the Board pursuant to this Declaration or the Bylaws.

Section 2.31. "*Master Plan*" means the Master Plan of the Iron Horse Planned Unit Development, as approved by the appropriate authorities of the City of Whitefish, as amended and supplemented from time to time.



Section 2.32. "*Member*" means any person or entity holding membership in the Iron Horse Association.

Section 2.33. "*Mortgage*" means any mortgage, deed of trust, trust indenture, contract for deed, or other document which is recorded in the office of the Clerk and Recorder of Flathead County, Montana, and which encumbers any portion of the Property or interest therein as security for the payment of a debt or obligation.

Section 2.34. "*Mortgagee*" means any person named as a beneficiary or mortgagee under a Mortgage, or any successor to the interest of any such person under such Mortgage. In the case of a contract for deed, the seller shall be considered the "Mortgagee" and the buyer shall be considered the "Owner."

Section 2.35. "*Iron Horse*" means the community created by this Declaration, consisting of the Property (including any Expansion Property, after annexation of it in accordance with Article XVII) and all of the Improvements located on the Property.

Section 2.36. "*Iron Horse Association*" means the Iron Horse Homeowners Association, Inc., a Montana nonprofit corporation, and any successor of that entity by whatever name.

Section 2.37. "*Iron Horse Documents*" means the basic documents creating and governing Iron Horse, including, but not limited to, this Declaration, the Articles of Incorporation and Bylaws, the Design Guidelines, the Iron Horse Rules and any other procedures, rules, regulations or policies adopted under such documents by the Iron Horse Association, all as may be amended from time to time.

Section 2.38. "*Iron Horse Rules*" means the rules and regulations adopted by the Iron Horse Association from time to time as provided in Section 5.3.

Section 2.39. "*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, unless and until such person or entity has acquired fee simple title pursuant to foreclosure or other proceedings.

Section 2.40. "*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 20 years later, or (b) the date on which the Declarant has platted all of the Expansion Property and sold 90% of the Lots in each of the Plats. When Declarant has determined that no additional property shall be considered Expansion Property, Declarant shall so notify the Iron Horse Association in writing. The period of Declarant Control may be reinstated or extended by agreement between Declarant and the Iron Horse Association, subject to whatever terms, conditions, and limitations the Board of Directors may impose on the subsequent exercise by Declarant of the Special Declarant Rights. After the termination of the Period of

Declarant Control, Declarant, if still an Owner, will continue to have all the rights and duties ordinarily given to Members under this Declaration.

Section 2.41. "*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 2.42. "*Plat*" means any engineering survey or surveys of all or part of the Property (including Expansion 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 2.43. "*Property*" means and includes the property described on *Exhibit A* 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 2.44. [Reserved]

Section 2.45. "*Special Assessment*" means an Assessment levied pursuant to Section 9.5.

Section 2.46. "*Special Declarant Rights*" is defined as set forth in Section 11.1 below.

Section 2.47. [Reserved]

Section 2.48. "*Successor Declarant*" means any party or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as permitted by Section 22.7 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.

Section 2.49. "*Supplemental Covenants*" means additional or further restrictive covenants imposed on a portion or portions of the Property from time to time.

Section 2.50. "*City of Whitefish*" means the City of Whitefish, Montana.

### ARTICLE III

#### THE IRON HORSE PLANNED COMMUNITY

Section 3.1. *Establishment of Planned Community.* By this Declaration, Iron Horse is established as a planned community. Declarant reserves the Development Right to incorporate a total of up to 456 Lots within Iron Horse in accordance with Article XVII 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 or address 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. Any Plat filed subsequent to the first Plat will be termed a supplement to the Plat, and the numerical sequence of each supplement will be shown on it.

### 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 Iron Horse 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 owner of the Club Property shall be considered an Owner and shall be a Member of the Iron Horse Association with all of the same privileges and duties of the other Owners and Members, except that the owner of the Club Property shall be entitled to ten (10) votes in the Iron Horse Association and, for the purpose of assessments, the Club Property shall be treated as ten (10) Lots and shall pay assessments accordingly.

Section 4.2. *Transfer of Membership.* An Owner may not transfer, pledge or alienate its membership in the Iron Horse 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.* Initially, the Iron Horse Association will have one class of voting membership, composed of all Owners, including Declarant, except that the Owner of the Club Property shall have such additional rights and responsibilities as expressly provided in this Declaration.

The Bylaws may set forth additional classifications of membership from time to time, except no additional classifications shall be created during the Period of Declarant Control unless the Declarant agrees in writing to any new or different class.

Section 4.4. *Voting Rights.* All Members will be entitled to vote on Iron Horse Association matters on the basis of one vote for each Lot owned, except that the Owner of the Club Property shall be entitled to ten (10) votes.

When more than one person holds an interest in any Lot, all such persons will be Members. The vote for such Lot may be exercised by one person or alternative persons as the Owners among themselves determine. If more than one of the multiple Owners are present at a meeting in person or by proxy, the vote allocated to their Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the multiple Owners casts the vote allocated to his Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

Any Owner of a Lot that is leased may assign his voting right to the tenant, provided that a copy of the instrument of assignment is furnished to the Secretary of the Iron Horse Association prior to any meeting in which the tenant exercises the voting right.

Section 4.5. *Appointment of Officers and Directors by Declarant/Club.* 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 Iron Horse Association.

Notwithstanding the foregoing, Declarant may voluntarily surrender the right to appoint, remove and replace Directors and officers of the Iron Horse Association before the end of the Period of Declarant Control by providing a notice to that effect to the Iron Horse Association and otherwise complying with the procedures for termination of this Special Declarant Right, as set forth in the Bylaws. However, upon voluntarily terminating this Special Declarant Right in advance of the expiration of the Period of Declarant Control, Declarant may require that specified actions of the Iron Horse Association or the Board, as described in an instrument executed and recorded by Declarant in the office of the Clerk and Recorder of Flathead County, Montana, be approved by Declarant before those actions become effective.

After expiration of the Period of Declarant Control or Declarant's voluntary surrender of the right to appoint, remove and replace Directors of the Iron Horse Association, the Club shall have the right to appoint, remove and replace one Director of the Iron Horse Association.

Section 4.6. *Notice of Membership.* Any person, on becoming a Member, will furnish the Secretary of the Iron Horse Association with a photocopy or certified copy of the recorded instrument or such other evidence as may be specified by the Board under the Bylaws or the Iron Horse Rules, vesting the person with the interest required to make him a Member. At the same time, the Member will provide the Iron Horse Association with the single name and address to which the Iron Horse Association will send any notices given pursuant to the Iron Horse Documents. The Member will state in such notice the voting interest in the Iron Horse Association to which the Member believes he is entitled and the basis for that determination. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Member will give a new written notice to the Iron Horse Association containing all of the information required to be covered in the original notice. The Iron Horse Association will keep and preserve the most recent written notice received by the Iron Horse Association with respect to each Member.

Section 4.7. *Owner's and Association's Addresses for Notices.* All Owners of each Lot will have one and the same registered mailing address to be used by the Iron Horse Association or other Owners for notices, demands and all other communications regarding Iron Horse Association matters. The Owner or Owners of a Lot will furnish the registered address to the Secretary of the Iron Horse Association within five days after receiving title to 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 is registered or if all of the Owners cannot agree, then the address of the Lot will be deemed the registered address until another registered 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 given if delivered to any person occupying the Lot or sent to the Lot by any other means specified for a particular notice in any of the Iron Horse Documents, or if the Lot is unoccupied, if the notice is held and available for the Owners at the principal office of the Iron Horse Association. All notices and demands intended to be served upon the Board of Directors will be sent to the address of the Iron Horse Association or such other address as the Board may designate from time to time by a notice delivered to all Owners in accordance with this Section.

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 one 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.

Section 4.8. *Compliance with Iron Horse Documents.* Each Owner will abide by and benefit from the provisions, covenants, conditions, and restrictions contained in the Iron Horse Documents.

## ARTICLE V POWERS AND DUTIES OF IRON HORSE ASSOCIATION

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

Section 5.2. *Common Area.*

5.2.1. *Conveyance by Declarant.* On or before the date on which Declarant conveys any Lot to another party, Declarant will convey to the Iron Horse Association, by written instrument recorded with the Clerk and Recorder of Flathead County, Montana, the Common Areas more fully described on the attached *Exhibit B*, including any Improvements located on and the rights and easements appurtenant to such property. From time to time before the expiration of the Period of Declarant Control, Declarant may, but will not be obligated to, convey to the Iron Horse Association, by written instrument recorded with the Clerk and Recorder of Flathead County, Montana, other parts of the Property (including the Expansion Property) as Common Area.

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, and such other persons as may be permitted to use the Common Area by agreement established under Sections 5.2.6 or 5.2.7 below or otherwise.

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

5.2.4. *Iron Horse Association's Responsibility for Common Area.* The Iron Horse Association, subject to the rights and obligations of the Owners set forth in this Declaration, will be responsible for the management and control of the Common Area and all Improvements on the Common Area (including furnishings and equipment related thereto), and will keep it in good, clean, and attractive condition and repair consistent with the standards of Iron Horse.

5.2.5. *Declarant's Right to Perform for the Account of the Iron Horse Association.* In the event the Iron Horse Association does not repair or maintain the Common Area, Declarant will have the right, but not the obligation, to perform such duties for the Iron Horse Association. In that event, Declarant will be entitled to reimbursement from the Iron Horse Association of all costs incurred by Declarant, such reimbursement being due within 30 days after the receipt by the Iron Horse Association of an invoice from Declarant, itemizing the costs incurred. After expiration of the 30 day period allowed for payment, Declarant may collect interest on the amount due at the Default Rate.

5.2.6. *Declarant's Agreements Regarding Common Area.* Upon the transfer by Declarant to the Iron Horse Association of any Common Area as provided in this Declaration, Declarant may agree under the terms of the transfer that the Iron Horse Association will be required to contract with organizations operating within or in the vicinity of Iron Horse, to allow use of all or part of the Common Area under such terms and for such charges as may be acceptable to Declarant and such association or other organizations.

Any use of the Common Area by Owners and their families, tenants and guests, and such other persons permitted access to the Common Area will be subject to any applicable Iron Horse Rules governing the Common Area.

5.2.7. *Association's Agreements Regarding Common Area.* The Iron Horse 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 Iron Horse 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. *Rules and Regulations.*

5.3.1. From time to time and subject to the provisions of the Iron Horse Documents, the Board of Directors may adopt, amend and repeal rules and regulations, to be known as the "Iron Horse Rules," governing, among other things and without limitation:

- (i) The use of the Common Area; and
- (ii) The use of private roads, if any, within Iron Horse that are not designated as Common Area.

A copy of the Iron Horse Rules in effect will be distributed to each Member of the Iron Horse Association, and any change in the Iron Horse Rules will be distributed or made available to each Member within a reasonable time following the effective date of the change.

5.3.2. *Enforcement.* The Board of Directors will provide for enforcement of the Iron Horse Rules as set forth in the Bylaws. Without limiting the generality of the foregoing, the Board may suspend the voting rights of a Member after notice and hearing as provided in the Bylaws for an infraction of the Iron Horse Rules.

Section 5.4. *Cooperation with Municipality/Districts.* The Iron Horse Association will cooperate in all respects with any municipality or special district to enable both the Iron Horse Association and the municipality/district to most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time such municipality/district, if any, and the Iron Horse Association each may use the services of the other in the furtherance of its obligations, and each may contract with another to better provide for such cooperation. If either the Iron Horse Association or a municipality/district should fail or refuse to provide the services which it is obligated to provide under its respective formative documents for any reason, then the other, as permitted by law and to the best of its ability, may assume that obligation until such time as the entity primarily obligated is able to resume its functions, and the acting entity may charge the other a reasonable fee for the provision of such services.

Section 5.5     *Water and Sanitary Sewer Facilities.*

5.5.1. *Sanitary Sewer - Initial Construction.* Each Lot shall be served by sanitary sewer service. Declarant shall be responsible for the initial construction of the sewer mains; the service line check valve and shutoff valve located at or near the property line of each Lot; and the service line running between the sewer main and these valves. Each Owner shall be responsible for the initial construction of all sewer facilities located on that Owner's Lot, including but not limited to the service line running from the house to the service line check valve and shutoff valve located at or near the property line; and, if required, the pump and pumping system and appurtenances needed to pump the sewage from the house to the sewer main and any control and alarm panels, wiring and electrical connections relating to the pumping system. If a pumping system is required, the Owner shall install a pumping system which is in compliance with applicable requirements of the City of Whitefish (which currently requires an "Environment One" pumping system).

5.5.2. *Sanitary Sewer - Ongoing Maintenance.* On completion, the sewer mains will be conveyed to, owned, operated, repaired, maintained, and replaced by the City of Whitefish. On completion, each Owner shall be responsible for the operation, repair, maintenance and replacement of all sewer facilities other than the sewer main, including but not limited to the facilities located on that Owner's Lot, the service line check valve and shutoff valve located at or near the property line, and the service line running from those valves to the sewer main. Each Owner agrees to install, operate, repair, maintain and replace the sewer facilities for which the Owner is responsible in such a manner as to cause no injury to other property or the overall sewer system, and to be in compliance with any ordinances, rules and regulations adopted by the City of Whitefish concerning the sewer system.

5.5.3. *Sanitary Sewer - Fees.* On completion of the sewer improvements in accordance with the regulations of the City of Whitefish, the City of Whitefish has agreed to provide sanitary sewer service to each Lot. Each Owner shall pay directly to the City of Whitefish such amounts for sanitary sewer service, including monthly charges, hook-up fees and all other fees and charges as may be set from time to time by the City of Whitefish relating to sanitary sewer service.

5.5.4. *Water Service - Initial Construction.* Each Lot shall be served by a water system owned and operated by the Iron Horse Association. Declarant shall be responsible for the initial construction of the water mains; the shutoff valve (curb stop) located at or near the property line of each Lot; and the service line running between the water main and the shutoff valve. Each Owner shall be responsible for the initial construction 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; and, if required, the individual pressure reducing valve and appurtenant shutoff valves, pipes and fittings. If a pressure reducing valve is required in order to reduce the water pressure to a maximum of 80 pounds per square inch, the Owner shall furnish and install the valve so that it has an external (outside the house) point of discharge. Internal (inside the house) points of discharge are not permitted for pressure reducing valves, and the Iron Horse Association shall not be responsible for any damages that may occur from use of an internal point of discharge.



5.5.5. *Water Service - Ongoing Maintenance.* On completion, the water mains will be conveyed to, owned, operated, repaired, maintained, and replaced by the Iron Horse Association. On completion, the shutoff valve and the service line running between the water main and the shutoff valve will be conveyed to, owned by, and subject to the control of the Iron Horse Association, but each Owner shall be responsible for the repair, maintenance and replacement of the shutoff valve and the service line running between the water main and the shutoff valve. In addition, 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; and, if required, the individual pressure reducing valve and appurtenances. Each Owner agrees to install, operate, repair, maintain and replace the water facilities for which the Owner is responsible in such a manner as to cause no injury to other property or the overall water system, and to be in compliance with any rules and regulations adopted by the Iron Horse Association concerning the water system.

5.5.6. *Water Service - Fees.* Each Owner shall pay to the Iron Horse Association such amounts for water service, including monthly charges, hook-up fees and all other fees and charges as may be set from time to time by the Iron Horse Association relating to water service. All such charges shall be considered Assessments, as provided in Article IX, below.

5.5.7. *Water Meter.* Water usage shall be separately metered for each Lot. Each Owner shall be responsible for furnishing a water meter, purchased from the City of Whitefish, and for the installation, operation, repair, maintenance and replacement of the water meter so that the water meter will at all times be in compliance with the applicable requirements of the City of Whitefish and the Iron Horse Association. Each Owner shall cooperate in permitting the City of Whitefish and/or the Iron Horse Association to periodically read the water meter to determine water usage. The City of Whitefish and the Iron Horse Association may, but shall not be required to, take into account the amount of water usage in determining the fees and charges to be made for sewer and/or water service.

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

#### Section 5.6. *Delegation by Iron Horse Association.*

5.6.1. *Manager.* The Iron Horse Association may employ or contract for the services of a Manager to act for the Iron Horse Association and the Board and the officers according to the powers and duties delegated to the Manager pursuant to the Bylaws or resolution of the Board. Neither the Board nor any officer of the Iron Horse Association will be liable for any omission or improper exercise by a Manager of any such duty, power, or function so delegated by written instrument executed by or on behalf of the Board. The Manager may be the Declarant or a person related to Declarant.

5.6.2. *Committees.* The Iron Horse Association may delegate any of its rights, duties or responsibilities to any committee or other entity (in addition to the Design Review Committee) that the Board may choose to form.

5.6.3. *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 Iron Horse Documents.

Section 5.7. *Ownership of Personal Property and Real Property for Common Use.* The Iron Horse Association, through action of its Board of Directors, may acquire, hold and dispose of personal property and real property. The Board, acting on behalf of the Iron Horse Association, will accept any real or personal property, leasehold or other property interests within Iron Horse and conveyed to the Iron Horse Association by Declarant.

Section 5.8. *Roads and Streets.* The City of Whitefish shall be responsible for maintaining all public roads within the Property. The Iron Horse Association shall be responsible for maintaining all private roads shown on the Plat (except private driveways located within Lots on the Property, which shall be the responsibility of the Owner 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 drive areas except private driveways located within Lots on the Property. The Iron Horse Association shall be responsible for maintaining all emergency egress roads with adequate snow removal to ensure safe, two-way circulation year-round and by keeping the right of way cleared of slash. The Board will cooperate with the applicable traffic and fire control officials to post roads and streets with traffic control, fire lane, and parking regulation signs. The Iron Horse Association shall also be responsible for maintaining all paths, walkways, bike paths, landscaping, irrigation and other improvements constructed by Declarant or the Iron Horse Association and located either within the private road easement areas shown on the Plat or (with the permission of the City of Whitefish) located within the public road rights-of-way. If the breakaway vehicular barrier between the cul-de-sac at the end of Lookout Lane and Whitefish Lookout Road is removed by the Association at any time in the future, the Iron Horse Association shall pave Whitefish Lookout Road from that point to its intersection with Big Mountain Road.

Section 5.9. *Books and Records.* The Iron Horse 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 Iron Horse Documents, and the books, records, and financial statements of the Iron Horse Association prepared pursuant to the Bylaws. The Iron Horse Association may charge a reasonable fee for copying such materials.

Section 5.10. *Reserve Account.* The Iron Horse Association will establish and maintain an adequate reserve fund from Annual Assessments levied pursuant to Section 9.3 below for maintenance, repair or replacement of the Common Area and Improvements located within the Common Area that must be replaced on a periodic basis and for any other facilities made available to the Iron Horse Association that must be replaced on a periodic basis with contribution from the Iron Horse Association.

Section 5.11. *Working Capital Account.* In order to provide the Iron Horse Association with adequate working capital funds, the Iron Horse Association will collect at the time of the sale of each Lot an amount equal to three months' installments of the Annual Assessments at the rate in effect at the time of the sale. The Iron Horse Association will maintain such funds in a segregated account to meet unforeseen expenditures or to acquire additional equipment or services for the benefit of the Members. Such payments to this fund will not be considered advance payments of Annual Assessments.

Section 5.12. *Successor to Declarant.* The Iron Horse Association will succeed to all of the rights, duties and responsibilities of Declarant under this Declaration upon termination of the Period of Declarant Control. Notwithstanding the preceding sentence, the Iron Horse Association will not succeed to any rights of Declarant regarding any portion of the Expansion Property which has not then been incorporated into the Property.

Section 5.13. *Implied Rights and Obligations.* The Iron Horse Association will perform all of the duties and obligations imposed on it expressly by the Iron Horse Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Iron Horse Documents or reasonably necessary to satisfy any such duty or obligation. The Iron Horse Association may exercise any other right or privilege (i) given to it expressly by the Iron Horse Documents, (ii) reasonably to be implied from the existence of another right or privilege given expressly by the Iron Horse Documents, or (iii) reasonably necessary to effectuate any such right or privilege.

## ARTICLE VI DESIGN REVIEW COMMITTEE

Section 6.1. *Committee and Guidelines.* There is hereby established a Design Review Committee, which will be responsible for the establishment and administration of Design Guidelines to facilitate the purposes and intent of this Declaration. The Committee may amend, repeal and augment the Design Guidelines from time to time, in the Committee's sole discretion. The Design Guidelines will be binding on all Owners and other persons governed by this Declaration.

The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

6.1.1. Procedures for making application to the Committee for design review approval, including the documents to be submitted and the time limits in which the Committee must act to approve or disapprove any submission.

6.1.2. Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under the Design Guidelines.

6.1.3. Designation of the Building Site on a Lot, establishing the maximum developable area of the Lot.

6.1.4. Minimum and maximum square foot areas of living space that may be developed on any Lot.

6.1.5. Landscaping regulations, with limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the use of plants indigenous to the locale, and other practices benefitting the protection of the environment, aesthetics and architectural harmony of Iron Horse.

6.1.6. General instructions for the construction, reconstruction, refinishing or alteration of any Improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation of utility lines or conduits on the Property, addressing matters such as loading areas, waste storage, trash removal, equipment and materials storage, grading, transformers and meters.

6.1.7. Consideration of whether the proposed improvement adjacent to the golf course will have an adverse effect on the golf course, whether by restriction of view, hazards to persons or otherwise.

Section 6.2. *Committee Membership.* The Committee will be composed of up to three persons, who will generally be professional design consultants. The Committee need not include any Member of the Iron Horse Association. 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 Iron Horse 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.* The Committee will review, study and either approve or reject proposed Improvements on the Property, all in compliance with this Declaration and as further set forth in the Design Guidelines and such rules and regulations as the Committee may establish from time to time to govern its proceedings. 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 shall have been approved by the Committee; provided, however, that Improvements that are completely within a Building may be undertaken without such approval. All Improvements will be constructed only in accordance with approved plans.

6.3.1. *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, seals, materials, color, location on the Building Site, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Design Guidelines and the other Iron Horse 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.

6.3.2. *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 6.4. *Organization and Operation of Committee.*

6.4.1. *Term.* The term of office of each member of the Committee, subject to Section 6.2, will be one year, commencing January 1 of each year, and continuing until his 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.

6.4.2. *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.

6.4.3. *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.

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

6.4.5. *Expert Consultation.* The Committee may avail itself of other technical and professional advice and consultants as it deems appropriate, and the Committee may delegate its plan review responsibilities, except final review and approval, to one or more of its members or to consultants retained by the Committee. Upon that delegation, the approval or disapproval of plans and specifications by such member or consultant will be equivalent to approval or disapproval by the entire Committee.

6.4.6. *Improvements Adjacent to the Golf Course.* The Club shall be given notice of all meetings of the Committee wherein the construction or improvement under consideration (or any portion thereof) is contiguous to the Club Property. If, in the reasonable opinion of the Club, the construction or modification being reviewed has a material adverse impact on the golf course whether by restriction of view, hazards to person or otherwise, then, in that event, the Club may disapprove the proposed construction irrespective of the approval of same by the Committee. The Committee shall notify the Owner in writing of the objection of the Club, and the Owner shall resubmit to the Committee the proposed construction or modification so as to take into account the objection of the Club.

Section 6.5. *Expenses.* Except as provided in this Section below, all expenses of the Committee will be paid by the Iron Horse Association and will constitute a Common Expense. The Committee will have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Committee from time to time, and such fees will be collected by the Committee and remitted to the Iron Horse Association to help defray the expenses of the Committee's operation. In addition, the Iron Horse Association may engage outside consultants and other professionals to review submissions, the cost of which shall be borne by the person or entity making the submission or request.

Section 6.6. *Other Requirements.* Compliance with the Iron Horse design review process is not a substitute for compliance with City of Whitefish 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.

Further, the establishment of the Design Review Committee and procedures for architectural review will not be construed as changing any rights or restrictions upon Owners to maintain and repair their Lots and Improvements as otherwise required under the Iron Horse Documents.

Section 6.7. *Limitation of Liability.* The Committee will use its own judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee nor any individual Committee member will be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Committee or any individual Committee member acted with malice or harmful intent. Approval by the Committee does not necessarily assure approval by the appropriate governmental board or commission for the City of Whitefish. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members will be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the construction of the Improvements. Neither the Board, the Design Review Committee, nor any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Iron Horse Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Committee will be defended and indemnified by the Iron Horse Association in any such suit or proceeding which may arise by reason of the Committee's review or decision. The Iron Horse Association, however, will not be obligated to indemnify each member of the Committee to the extent any such member of the Committee is adjudged to be liable for negligence or misconduct in the performance of his duty as a member of the Committee, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

Section 6.8. *Enforcement.*

6.8.1. *Inspection.* Any member or authorized consultant of the Design Review

Committee, or any authorized officer, Director, employee or agent of the Iron Horse 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 Iron Horse Documents and the plans and specifications approved by the Design Review Committee.

6.8.2. *Completion of Construction.* Before any Improvements on a Lot may be occupied, the Owner of the Lot will be required to obtain a temporary certificate of occupancy issued by the Design Review Committee indicating substantial completion of the Improvements in accordance with the plans and specifications approved by the Committee, and imposing such conditions for issuance of a final certificate of occupancy as the Committee may determine appropriate in its reasonable discretion. Without limiting the generality of the preceding sentence, the Committee may require, as a condition to the issuance of the temporary certificate of occupancy, that the Owner deposit with the committee such sums as may be necessary to complete the landscaping on the Lot by a specified date. If the landscaping is not completed as scheduled, the Committee may apply the deposit to cover the cost of completing the work and enforce such other remedies as are available to the Iron Horse Association for the failure of the Owner to comply with these covenants, including without limitation the remedies set forth in Section 6.9.

6.8.3. *Certificate of Compliance.* Upon payment of a reasonable fee established from time to time by the Design Review Committee, and upon written request of any Owner or his agent, an existing or prospective Mortgagee, or a prospective grantee, the Committee will issue an acknowledged certificate, in recordable form, setting forth generally whether, to the best of the Committee's knowledge, the Improvements on a particular Lot are in compliance with the terms and conditions of the Design Guidelines. Unless the Committee responds to such request within 30 days after receipt of the request, it will be conclusively presumed that the Owner and the Owner's Improvements are in conformance with all the terms and conditions subject to the control of the Committee.

6.8.4. *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 a 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 Iron Horse Association, upon request of the Committee and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove any Improvement constructed, reconstructed, refinished, altered, or maintained in violation of these Covenants. The Owner of the Improvement will immediately reimburse the Iron Horse Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Iron Horse Association within 30 days

after the Iron Horse Association gives the Owner notice of the expenses, the sum owed to the Iron Horse Association will bear interest at the Default Rate from the date the expense was incurred by the Iron Horse 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 6.9. *Continuity of Construction.* All Improvements commenced on the Property will be prosecuted diligently to completion and will be completed within 24 months after commencement, unless an exception is granted in writing by the Committee. If an Improvement is commenced and construction is then abandoned for more than 90 days, or if construction is not completed within the required 24-month period, then after notice and opportunity for hearing as provided in the Bylaws, the Iron Horse Association may impose a fine of not less than \$100.00 per day (or such other reasonable amount as the Iron Horse Association may set) to be charged against the Owner of the Lot until construction is resumed, or the Improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Board of Directors that such abandonment is for circumstances beyond the Owner's control. Such charges will be a Default Assessment and lien as provided in Article IX.

Section 6.10. *Reconstruction of Common Area.* The reconstruction by the Iron Horse Association after destruction by casualty or otherwise of any Common Area that is accomplished in substantial compliance with "as built" plans for such Common Area will not require compliance with the provisions of this Article or the Design Guidelines.

## 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 ordinances of the City of Whitefish, and the laws of the State of Montana and the United States, and as set forth in the Iron Horse Documents or other specific recorded covenants affecting all or any part of the Property.

Section 7.2. *Use of Lots.* Each Lot may be used only for the purposes permitted by the applicable zoning, including any applicable planned unit development. If the provisions of the applicable planned unit development are more restrictive than the provisions of this Declaration, the more restrictive provisions of the planned unit development shall be controlling. The rental of units within an area designated for multi-family use shall not be considered a prohibited business, commercial or non-residential use in those areas.

Section 7.3. *Motorized Vehicles.* No trucks, trail bikes, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailer, boats or boat trailers or similar vehicles other than passenger automobiles or pickup or utility trucks with a capacity of three-quarters ton or less or any other motorized vehicles will be parked, stored or in any manner kept or placed on any portion of the Property except in an enclosed garage or screened from public view. This restriction, however, will not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business,



from making deliveries or otherwise providing services to the Property or for Declarant or the other Owners. No snowmobiles or off-road vehicles will be allowed to operate on any roads (including public roads) or trails in the Property, except for emergency purposes or in areas specifically designated for such purposes by the Board. Motorcycles may be used on roads in the Property only for transportation to and from a dwelling and shall be operated in a quiet manner.

Section 7.4. *Excavation.* No excavation will be made except in connection with Improvements approved as provided in these Covenants. For purposes of this Section, "excavation" means any disturbance of the surface of the land which results in a removal of earth, rock, or other substance a depth of more than 18 inches below the natural surface of the land.

Section 7.5. *Electrical, Television, Natural Gas and Telephone Service.* All electrical, television, natural gas and telephone service installations will be placed underground.

Section 7.6. *Sanitation.* Each structure designed for occupancy will connect with sanitation facilities as are made available from time to time by the City of Whitefish or any other approved utility supplier. No septic tanks or drainfields shall be permitted on any residential Lots.

Section 7.7. *Water and Wells.* Each structure designed for occupancy will connect with water facilities as are made available from time to time by the Iron Horse Association, the City of Whitefish or other approved utility supplier. No wells from which water, oil, or gas is produced shall be permitted on any residential Lots. Declarant, the Iron Horse Association, and their assigns may own, install, maintain and operate water wells, water works, storage tanks, reservoirs, or other facilities in the Common Area.

Section 7.8. *Signs.* No signs of any kind will be displayed to the public view on or from any portion of the Property, except for signs approved by the Design Review Committee used by a builder to identify a Lot or Lots during the construction period, and except for signs permitted by Section 11.1.3., below.

Section 7.9. *Animals and Pets.* No animals, livestock, or poultry of any kind will be kept, raised, or bred on any portion of the Property, except dogs, cats or other household pets (the kind and number of which may be regulated, permitted or prohibited from time to time by the Iron Horse Rules).

7.9.1. *Containment.* Household pets, such as dogs and cats, must be contained upon the Owner's Lot, and such pets may not be permitted to run at large at any time.

7.9.2. *Leashes.* Pedestrians within the Property who are accompanied by dogs must have the dogs under the pedestrians' direct control by use of a leash not to exceed 10 feet in length.

7.9.3. *Attractants.* The use of wildlife attractants such as salt licks is prohibited. This provision shall not prohibit bird feeders.

Section 7.10. *Drainage.* No Owner will do or permit any work, place any landscaping or install any other Improvements or suffer the existence of any condition whatsoever which will alter or interfere with the drainage pattern for the Property, except to the extent such alteration and drainage pattern is approved in writing by the Committee or the Board of Directors, and except for the right which is hereby reserved to Declarant to alter or change drainage patterns.

Section 7.11. *Trash.* No trash, ashes, garbage construction materials or other refuse will be thrown or dumped on any land or area within the Property. The Iron Horse Association will cooperate in and encourage programs to recycle trash and other refuse. There will be no burning or other disposal of refuse out of doors. Each Owner will provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles will be screened from the public view and from the wind and protected from animal and other disturbance.

Section 7.12. *Construction Regulations of the Design Guidelines.* All Owners and contractors will comply with the portions of the Design Guidelines regulating construction activities. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors and Owners' representatives on the Property at any time; the conservation of landscape materials; and fire protection.

Section 7.13. *Blasting.* If any blasting is to occur, the Committee and Declarant will be informed far enough in advance to allow them to make such investigation as they deem necessary to confirm that appropriate protective measures have been taken prior to the blasting. Notwithstanding the foregoing, no approval of any blasting by Declarant or the Committee will in any way release the person conducting the blasting from all liability in connection with the blasting, nor will such approval in any way be deemed to make Declarant or the Committee liable for any damage which may occur from blasting, and the person doing the blasting will defend and hold harmless and hereby indemnifies Declarant and the Committee from any such expense or liability. Declarant or the Committee may impose any reasonable conditions and restrictions, including time and date restrictions, on all blasting.

Section 7.14. *Temporary Structures.* No temporary structures will be permitted except as may be determined to be necessary during construction and as specifically authorized by the Committee, and except as necessary for the exercise by Declarant of the Special Declarant Rights.

Section 7.15. *Compliance with Laws.* Subject to the rights of reasonable contest, each Owner will promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

Without limiting the generality of the foregoing, each Owner will abide by any wildlife regulations imposed by the Iron Horse Association or any agency or authority having jurisdiction over the Property. Further, no Owner will dispose or allow any person under the Owner's control or direction to release, discharge or emit from the Property or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

Section 7.16. *No Outside Clotheslines.* No laundry or wash will be dried or hung outside any Building.

Section 7.17. *Parking and Auto Repair.* No automobiles or other vehicles will be parked in any street or upon any portion of the Property except within garages, carports, or designated parking areas. No work on automobiles or other vehicle repair will be performed in any visible or exposed portion of Iron Horse except in emergencies.

Section 7.18. *Abandoned, Inoperable, or Oversized Vehicles.* No abandoned or inoperable vehicles of any kind will be stored or parked on any portion of the Property, except as provided below. "Abandoned or inoperable vehicle" is defined as any vehicle which has not been driven under its own propulsion for a period of three weeks or longer; provided, however, this will not include vehicles parked by Owners while on vacation or residing away from Iron Horse. A written notice describing the "abandoned or inoperable vehicle" and requesting its removal may be personally served upon the Owner or posted on the unused vehicle. If such vehicle has not been removed within 72 hours after notice has been given, the Iron Horse Association will have the right to remove the vehicle without liability, and the expense of removal will be a Default Assessment charged against the Owner as provided in Section 9.6. All unsightly or oversized vehicles, snow removal equipment, garden maintenance equipment, and all other unsightly equipment and machinery may be required by Declarant or the Board of Directors to be stored at a designated location or locations. "Oversized" vehicles, for purposes of this Section, will be vehicles which are too high to clear the entrance to a residential garage.

Section 7.19. *Antennae.* No exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device will be permitted without the prior written consent of the Committee, and appropriate screening.

Section 7.20. *Outside Burning.* There will be no exterior fires, except barbecues, outside fireplaces, braziers and incinerator fires contained within facilities or receptacles and in areas designated and approved by the Committee. No Owner will permit any condition upon its portion of the Property which creates a fire hazard or is in violation of fire prevention regulations.

Section 7.21. *Fertilizers and Pesticides.* Application of fertilizers or pesticides in the subdivision should be minimized to protect the water quality of the downstream residents.

Section 7.22. *Noise.* No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Property or Improvements, will be placed or used on any portion of the Property.

Section 7.23. *Lighting.* All exterior lighting of the Improvements and grounds on the Property will be subject to regulation by the Design Review Committee.

Section 7.24. *Obstructions.* There will be no obstruction of any walkways or bike paths or interference with the free use of those walkways and paths except as may be reasonably required in connection with repairs. The Owners, their families, tenants, guests and invites are granted

nonexclusive easements to use the walkways and paths within the Property. That use will be subject to the Iron Horse Rules adopted by the Board from time to time.

Section 7.25. *Camping and Picnicking.* No camping or picnicking will be allowed within the Property except in those areas designated for those purposes. The Board, in its discretion, may ban or permit public assemblies and rallies within the Property.

Section 7.26. *House Numbers.* Each Dwelling Unit will have a house number with a design and location established by the Committee. All house numbers shall be visible from the road, either on the building or at the driveway entrance.

Section 7.27. *Fire Clearance Measures.* In construction and landscaping of houses, Owners shall create and maintain defensible space/vegetative clearance measures around structures as required by the Whitefish Subdivision Regulations and as indicated on the approved planned unit development for the Property, for the purpose of reducing fire danger. The Iron Horse Association shall maintain a fuel break around the perimeter of the golf course in accordance with the standards of the Montana Department of State Lands.

Section 7.28. *Roofing Material.* Owners shall utilize only Class A or B roofing materials as rated by the National Fire Protection Association. Use of wood shake roofs is discouraged.

Section 7.29. *Building Code.* All improvements shall be constructed in accordance with the applicable building codes of the governmental entity having jurisdiction, or if no such building codes are in effect, then in accordance with the Uniform Building Code. At present, the City of Whitefish has adopted a building code. All development of the Property shall be in accordance with the Whitefish building code and building permits shall be obtained as provided in the Whitefish building code. All development of the Property shall also be in accordance with the Whitefish zoning regulations applicable to the Property and the provisions of the applicable planned unit development.

Section 7.30. *Steep Terrain.* Lots within the Property may be subject to hazards from steep terrain. Driveways shall not exceed ten percent (10%) grade, nor be narrower than 10 feet, and shall be approved by the City of Whitefish as suitable access prior to the start of residential construction.

Section 7.31. *Fencing.* Fences or walls in the rear yard which are located on a joint property line will require the approval of the adjacent Lot owner to the rear. Fence height is limited to a maximum of six feet (6').

Section 7.32. *Clear Vision Area and Cul-de-sacs.* Owners shall cooperate in creating and maintaining a triangular "clear vision" area to be established and maintained at all road intersections and switchback curves, such that each of the two sides has a distance of 40 feet measured from the point of intersection (or the midpoint of the switchback curve) along the road centerlines of each road. Cul-de-sacs shall be kept unobstructed at all times.

Section 7.33. *Nuisance.* No obnoxious or offensive activity will be carried on within the Property, nor will anything be done or permitted which will constitute a public nuisance. No noise or other nuisance will be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Property or its occupants.

Section 7.34. *Forestry Activities.* Areas adjoining and in the vicinity of the Property are presently in use as managed timberland. Commercial forestry activities may occur in such areas which may produce nearby truck traffic, dust, noise, smoke and other impacts that may be perceived as incompatible with typical residential uses. Such commercial forestry activities shall not be considered to be nuisances.

Section 7.35. *Iron Horse Hiking Trail.* Declarant has made arrangements to provide the City of Whitefish with an easement for the Iron Horse Hiking Trail. The City of Whitefish may permit public use of the Iron Horse Hiking Trail in accordance with the easement.

Section 7.36. *General Practices Prohibited.* The following practices are prohibited at Iron Horse:

7.36.1. Allowing construction suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Committee;

7.36.2. Removing any rock, plant material, top soil or similar items from any property of others;

7.36.4. Use of surface water for construction; or

7.36.5. Careless disposition of cigarettes and other flammable materials.

Section 7.37. *Use of Property During Construction.* It will be expressly permissible and proper for Declarant and any Owner acting with the prior written consent of the Committee, and their respective employees, agents, independent contractors, successors, and assigns involved in the construction of Improvements on, or the providing of utility service to, the Property, the Expansion Property or other real property owned by Declarant, to perform such activities and to maintain upon portions of the Property as they deem necessary, such facilities as may be reasonably required, convenient, necessary or incidental to such construction and development of the Property. This permission specifically includes, without limiting the generality of the foregoing, maintaining storage areas, construction yards and equipment and signs. However, no activity will be performed and no facility will be maintained on any portion of the Property in such a way as to unreasonably interfere with or disturb any purchaser or Owner of a Lot, or to unreasonably interfere with the use, enjoyment or access of such Owner or his tenants, employees, guests, or business invites, of and to his Lot. If any Owner's use under this provision is deemed objectionable by the Design Review Committee, then the Design Review Committee, as applicable, in its sole discretion, may withdraw this permission.

Notwithstanding the foregoing, this Section will not operate to prevent the exercise of any Special Declarant Rights.

Section 7.38. *Partition or Combination of Lots.* No part of a Lot which is restricted in use to single family dwellings may be partitioned or separated from any other part thereof. No such Lots may be combined, but the Owner of two or more contiguous Lots may build one single family Dwelling Unit on the contiguous Lots, upon complying with all applicable requirements of the City of Whitefish, and with all applicable Design Guidelines, including without limitation procedures for adjusting Building Sites otherwise drawn for the Lots to accommodate a larger Dwelling Unit, minimum and maximum limitations of living area that may be constructed on any given number of contiguous Lots, and measures necessary to preserve any easements reserved with respect to the contiguous Lots.

The fact that two or more contiguous Lots may be owned by one person and developed with one single family Dwelling Unit will not affect the number of votes or the amount of Assessments allocated to the Lots. If the Owner is required by the City of Whitefish or any other governmental authority or by a Mortgagee to replat the Lots in order to construct Improvements on them, the number of votes and the allocation of Assessments to the Lots after replatting will equal the sum of the votes and Assessments allocated to the Lots before replatting. Each Lot will be conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or by this Declaration, including the Owner's membership in the Iron Horse Association and the right to use the Common Area, and with the appropriate allocation of voting rights and liability for Assessments established for the Lot as provided in this Deduction.

Section 7.39. *Common Area—Covenants to Apply.* The provisions of this Article above, with the exception of Section 7.2, will apply to the Common Area, and the Common Area will have the benefit of the provisions of this Article.

Section 7.40. *Rental and Leasing.* The Owner of a Lot will have the right to rent or lease his Lot, subject to the following conditions:

7.40.1. For Lots in areas designated on the Plat as being for single family residential use, all leases or rental agreements must be in writing with a minimum term of at least six (6) months. Owners of Lots in areas designated on the Plat as being for multi-family use may rent or lease their Lots without restriction as to the duration of the lease or rental agreement.

7.40.2. The lease or rental agreement shall be specifically subject to the Iron Horse Documents, and any failure of a tenant to comply with the Iron Horse Documents will be a default under the lease or rental agreement.

7.40.3. The Owner shall be liable for any violation of the Iron Horse Documents committed by the Owner's tenant, without prejudice to the Owner's right to collect any sums paid by the Owner on behalf of the tenant.

Section 7.41. *Enforcement.* The Iron Horse Association may take such action as it deems advisable to enforce these Covenants as provided in this Declaration. In addition, the Iron Horse Association will have a right of entry on any part of the Property for the purposes of enforcing this Article, and any costs incurred by the Iron Horse Association in connection with such enforcement which remain unpaid 30 days after the Iron Horse Association has given notice of the cost to the Owner and otherwise complied with the Act will be subject to interest at the Default Rate from the date of the advance by the Iron Horse Association through the date of payment in full by the Owner, and will be treated as a Default Assessment enforceable as provided in Article IX.

## ARTICLE VIII OWNERS' OBLIGATIONS FOR MAINTENANCE

Section 8.1. *Owner's Responsibility for Lot.* Except as provided in the Iron Horse Documents or by written agreement with the Iron Horse Association, all maintenance of a Lot and the Improvements located on it will be the sole responsibility of the Owner of the Lot. Each Owner will maintain its Lot in accordance with the community-wide standard of Iron Horse. The Iron Horse 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 does not satisfy such standard. 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 30 days after the mailing of such written notice, then the Iron Horse Association will proceed. The expenses of the maintenance by the Board will be reimbursed to the Iron Horse Association by the Owner within 30 days after the Iron Horse Association notifies the Owner of the amount due, and any sum not reimbursed within that 30 day period will bear interest at the Default Rate from the date of the expenditure until payment in full. Such charges will be a Default Assessment enforceable as provided in Article IX.

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 Iron Horse 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 Iron Horse Association within 30 days after the notice to the Owner of the amount owed, then those expenses will bear interest at the Default Rate from the date of the advance by the Iron Horse Association until payment by the responsible Owner in full, and all such expenses and interest will become a Default Assessment enforceable in accordance with Article IX.

## ARTICLE IX ASSESSMENTS

Section 9.1. *Creation of Lien and Personal Obligation for Assessments.* 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 Iron Horse Association (1) the Annual Assessments imposed by the Board of Directors as necessary to fund the Maintenance Fund and to generally carry out the functions of the Iron Horse Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; (3) Utility Assessments for water service and any other services provided by the Iron Horse Association; and (4) Default Assessments which may be assessed against a Lot pursuant to the Iron Horse Documents for the Owner's failure to perform an obligation under the Iron Horse Documents or because the Iron Horse Association has incurred an expense on behalf of or caused by the Owner under the Iron Horse Documents.

All Assessments, together with fines, interest, costs, and reasonable attorneys' (and legal assistants') 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' (and legal assistants') fees, 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 judgement 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 Iron Horse Association will be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of Iron Horse.

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 Iron Horse Association. Annual Assessments for Common Expenses will be based upon the estimated net cash flow requirements of the Iron Horse Association to cover items including, without limitation, the cost of routine maintenance, repair and operation of the Common Area; expenses of management; and premiums for insurance coverage as deemed desirable or necessary by the Iron Horse 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; management fees; expenses and liabilities incurred by the Iron Horse 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, as contemplated under Section 5.10.



9.3.2. *Apportionment of Annual Assessments.* 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 in the Project. Notwithstanding the preceding sentence, any Common Expenses or portion thereof benefitting fewer than all of the Lots will be assessed exclusively against the Lots benefitted. Further, the costs of insurance may be assessed in proportion to risk, and the costs of utilities may be assessed in proportion to usage.

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 quarterly in advance on the first day of each calendar quarter. The omission or failure of the Iron Horse 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. The Iron Horse Association will have the right, but not the obligation, to make pro rata refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

9.3.4. *Date of Commencement of Annual Assessments.* The Annual Assessments will commence as to all Lots on January 1, 1999. The Annual Assessments will commence for Lots contained in each phase of Expansion Property incorporated in the Property on the first day of the month following the recording of the Declaration of Annexation incorporating them into the Property, and will be prorated according to the number of months remaining in the calendar year.

9.3.5. *Capitalization of the Association.* Supplementing Section 5.11, upon acquisition of record title to a Lot from Declarant or any seller after Declarant, each Owner will contribute to the working capital and reserves of the Iron Horse Association an amount equal to one-fourth of the amount of the Annual Assessment determined by the Board of Directors for the Lot for the year in which the Owner acquired title. The Iron Horse Association will maintain the working capital funds in segregated accounts to meet unforeseen expenditures or to acquire additional equipment or services for the benefit of the Members. Such payments to this fund will not be considered advance payments of Annual Assessments.

#### Section 9.4. *Utility Assessments.*

9.4.1. *Determination by Board.* The Board of Directors may set charges and fees to be paid for water service or any other services provided by the Iron Horse Association to Owners. The charges may include monthly fees, hook-up charges, service fees, and other fees and charges relating to the provision of such services, including charges intended to fund a reserve for repairs and replacement of the water system.

9.4.2. *Apportionment and Collection of Utility Assessments.* The Board shall establish from time to time the method of setting and apportioning the Utility Assessments. The Utility Assessments may be set and apportioned depending on the usage of each Lot; they may be set at a fixed amount for each Lot regardless of use; they may be set and apportioned using other methods determined by the Board; or they may be some combination of usage charges, fixed charges, and other

charges.

9.4.3. *Payment and Notice of Change.* The Board shall set the due date for each Utility Assessments. In the event in of a change of the due date or a change in the amount or method of calculation of Utility Assessments, the Board shall send notice of the change to each Owner at least 30 days prior to the effective date of the change.

Section 9.5. *Special Assessments.*

9.5.1. *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 Iron Horse Association as may be required by the Act, to make up any shortfall in the current year's budget.

9.5.2. *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. Lots in a newly platted portion of the Expansion Property which is added to the Property shall not be subject to Special Assessments which preceded the recording of the new Plat, unless the Special Assessment is due in monthly or periodic installments, in which case the Lots in the newly platted portion shall be subject to the Special Assessment only to the extent of the installments which are not yet due at the time of the recording of the new Plat.

9.5.3. *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 9.6. *Default Assessments.* All monetary fines, penalties, interest or other charges or fees (excluding Annual and Special Assessments) levied against an Owner pursuant to the Iron Horse Documents, or any expense of the Iron Horse Association which is the obligation of an Owner or which is incurred by the Iron Horse Association on behalf of the Owner pursuant to the Iron Horse Documents, and any expense (including without limitation attorneys' and legal assistants' fees) incurred by the Iron Horse Association as a result of the failure of an Owner to abide by the Iron Horse Documents, constitutes a Default Assessment, enforceable as provided in this Declaration below.

Section 9.7. *General Remedies of Iron Horse Association for Nonpayment of Assessment.* Any installment of an Annual Assessment or a Special Assessment which is not paid within 30 days after its due date will be delinquent. In the event that an installment of an Annual or Special Assessment becomes delinquent, or in the event any Default Assessment is established under this Declaration, the Iron Horse Association, in its sole discretion, may take any or all of the following actions:

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

9.7.2. Charge interest from the date of delinquency at the Default Rate;

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

9.7.4. 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;

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

9.7.6. File a statement of lien with respect of the Lot and foreclose as set forth in more detail below.

9.7.7. For a delinquent Utility Assessment, the service in question may be suspended after giving the Owner 10 days' written notice that the service will be suspended unless the delinquent Utility Assessments are paid.

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

Section 9.8. *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 Iron Horse 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 Iron Horse Association, and the delinquent Assessments amounts then owing. Any such statement will be duly signed and acknowledged by an officer or director of the Iron Horse Association or by the Manager, 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 Iron Horse Association may have in its records for the Owner. At least 10 days after the Iron Horse Association mails the statement to the Owner, the Iron Horse 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 Iron Horse Association may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Montana. The Iron Horse Association will have the power to bid on a Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot.

Section 9.9. *Successor's Liability for Assessment.* All successors to the fee simple title of a Lot, except as provided in Section 9.10, 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. This liability of a successor will not be personal and will terminate upon termination of such successor's fee simple interest in the Lot. In addition, such successor will be entitled to rely on the statement of status of Assessments by or on behalf of the Iron Horse Association under Section 9.13.

Section 9.10. *Waiver of Homestead Exemption; Subordination of the Lien.* The lien of the Assessments will be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Montana, and to all other liens and encumbrances except the following:

9.10.1. Liens and encumbrances recorded before the date of the recording of this Declaration;

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

9.10.3. The lien for all sums unpaid on a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent, including any and all advances made by the First Mortgagee, even though some or all of such advances may have been made subsequent to the date of attachment of the Iron Horse Association's lien.

With respect to Section 9.10.3, any First Mortgagee who acquires title to a Lot by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Lot free of any claims for unpaid Assessments, interest, late charges, costs, expenses, and attorneys' (and legal assistants') fees against the Lot which accrue prior to the time such First Mortgagee or purchaser acquires title to the Lot.

All other persons who hold a lien or encumbrance of any type not described in Sections 9.10.1 through 9.10.3 will be deemed to consent that the lien or encumbrance will be subordinate to the Iron Horse Association's future liens for Assessments, interest, late charges, costs, expenses and attorneys' (and legal assistants') fees, as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

Section 9.11. *Reallocation of Assessments Secured by Extinguished Liens.* The sale or transfer of any Lot to enforce any of the liens to which the lien for Assessments is subordinate will extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer. The amount of such extinguished lien may be reallocated and assessed to all Lots as a Common Expense at the direction of the Board of Directors. However, no such sale or transfer will relieve the purchaser or transferee of a Lot from liability for, or the Lot from the lien of, any Assessments made after the sale or transfer.

Section 9.12. *Exempt Property.* The following portions of the Property will be exempt from the Assessments, charges, and liens created under this Declaration:

9.12.1. Any easement or other interest in the Property dedicated and accepted by the City of Whitefish and devoted to public use;

9.12.2. Any real property, an interest in which is owned by any special district established under Montana law;

9.12.3. All utility lines and easements; and

9.12.4. Common Area.

Section 9.13. *Statement of Status of Assessments.* The Iron Horse Association will furnish to an Owner or his designee or to any Mortgagee a statement setting forth the amount of unpaid Assessments then levied against the Lot in which the Owner, designee or Mortgagee has an interest. The Iron Horse Association will deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party within 14 business days after the registered agent of the Iron Horse Association receives the request by personal delivery or by certified mail, first class postage prepaid, return receipt requested or as otherwise required by the Act. The information contained in such statement, when signed by an officer or director of the Iron Horse Association or the Manager, will be conclusive upon the Iron Horse Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith.

Section 9.14. *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 Iron Horse Association.

## ARTICLE X PROPERTY RIGHTS OF OWNERS

Section 10.1. *Owners' Easements of Access and Enjoyment.* Every Owner has a perpetual, non-exclusive easement for access 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 Article.

Section 10.2. *Delegation of Use.* Any Owner may delegate, in accordance with the Iron Horse Documents, its rights of access and enjoyment described in Section 10.1 above to its tenants, employees, family, guests or invites.

Section 10.3. *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.

Section 10.4. *Emergency Access Easement.* A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 10.5 *Waiver of Protest to Special Improvement District.* By accepting a deed to any part of the Property, the owner does thereby waive their right to protest the creation of a Special Improvement District for the purpose of upgrading East Lakeshore Drive and Wisconsin Avenue to City standards, including provision of sidewalks, bike paths, and storm sewer improvements.

## 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 Improvements as indicated on any Plat filed with respect to the Property, including the Expansion Property;

11.1.2. *Development Rights.* The right to exercise all development rights in connection with the development of the Iron Horse Project (referred to here as “Development Rights”), including without limitation the right or combination of rights hereby reserved by Declarant, as follows:

(a) The right to annex all or part of the Expansion Property to the Project, in accordance with Article XVII.

(b) The right to create Lots and Common Area on the Property, including the Expansion Property.

(c) The right to subdivide Lots and convert Lots into Common Area on any part of the Property, including the Expansion Property.

(d) The right to withdraw real estate, whether contained within the Property initially subject to this Declaration or within the Expansion Property, from Iron Horse, as provided in Article XVII.

11.1.3. *Sales Activities.* The right to maintain sales and management offices, signs advertising the Project and model residences on the Common Area and on Lots owned by Declarant, whether contained within the Property initially subject to this Declaration, or within the Expansion Property.

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

11.1.5. *Master Association.* The right to make the Project subject to a master association.

11.1.6. *Association Directors and Officers.* The right to appoint any officer or director of the Iron Horse Association, as provided in this Declaration or the Bylaws.

11.1.7. *Order of Exercise of Declarant's Rights.* Declarant makes no representations and gives no assurances regarding the legal description or the boundaries of any phase of the Expansion Property or the order or time in which the phases of the Expansion Property may be developed or incorporated in the Project, or whether or to what extent any of the Expansion Property will be developed or incorporated in 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 (including the Expansion Property) will not operate to require Declarant to exercise a Development Right or other Special Declarant Right with respect to on any other portion of the Property (including the Expansion 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 a general easement upon, across, over, in, and under the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electrical, television and a master communications system. 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 the Property and to affix and maintain utility pipes, wires, circuits, conduits and other equipment under the Property. Any utility company using this general easement will use its best efforts to install and maintain the utilities provided for without disturbing the uses of the Owners, the Iron Horse 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 general easement request a specific easement by separate recordable document, either Declarant or the Iron Horse 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 Property without conflicting with the terms of this Declaration. This general 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 Iron Horse a perpetual easement and right-of-way for access over, upon, and across the Property, including the Expansion Property, for construction, utilities, drainage, ingress and egress, and for use of the Common Area, including

Common Area located within the Expansion Property. The location of these easements and rights-of-way may be made certain by Declarant or the Iron Horse 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, exceptions, 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 Iron Horse 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, recreation areas and parking areas, and to create other reservations, exceptions, and exclusions in the interest of the Owners and the Iron Horse Association, in order to serve the Owners within Iron Horse as initially built and expanded.

Declarant also reserves for itself and its successors and assigns and grants to the Iron Horse Association the concurrent right to establish from time to time by an instrument recorded in Flathead County, Montana, such easements, permits or licenses over the Common Area for access by certain persons (other than Owners and Owners' families and guests) who may be permitted to use designated portions of the Common Area as contemplated under this Declaration.

Section 11.6. *Maintenance Easement.* An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Iron Horse Association, and any member of the Board of Directors or Manager, 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 Iron Horse Association is obligated or permitted to perform pursuant to the Iron Horse Documents, including the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Lot, as required by the Iron Horse Documents. A further easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the owner of the planned golf course to be located upon the Lots described on the Plat as Golf Course (A), Golf Course (B), and Golf Course (C), and to 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 for construction, maintenance and repair of the planned golf course (including clubhouse and other improvements and amenities) in such manner and at such times of the day or night as may be deemed appropriate in the sole discretion of the owner of the planned golf course.

Section 11.7. *Drainage Easement.* An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Iron Horse 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 Iron Horse 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 sightly and usable condition as soon as reasonably possible following such work. Declarant, or its officers, agents, employees, successors and assigns must inform and obtain the approval of the Board of Directors prior to undertaking such drainage work, which approval will not be unreasonably withheld.

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.

Section 11.10. *Golf Course.* The golf course planned by Declarant is not and shall not be considered a part of the Common Area of Iron Horse. Nothing in this Declaration nor any designation or reference on any Plat, Master Plan, Iron Horse Document, planned unit development document, approval document issued by any government entity, drawing, advertisement, brochure, or any other document in any way relating to Iron Horse or any oral representation of any agent of the Declarant or any party related to Declarant shall give rise to any right, whether express or implied, of an Owner to play golf, have access to the planned golf course, become a member of the Club, require the Declarant to construct or maintain the area as a golf course, or otherwise impose any obligation on Declarant relating in any way to the proposed golf course. All arrangements relating to any Owner and the planned golf course must be in writing signed by the owner or operator of the planned golf course and shall be separate and apart from the Iron Horse Documents.

## **ARTICLE XII CLUB PROPERTY**

Section 12.1. *Club Property.* The golf course planned by Declarant will be privately owned and operated by the Club and is not a part of the Common Area hereunder. Nothing in this Declaration nor any designation or reference on any Plat, Master Plan, Iron Horse Document, planned unit development document, approval document issued by any government entity, drawing, advertisement, brochure, or any other document in any way relating to Iron Horse or any oral representation of any agent of the Declarant or any party related to Declarant shall give rise to any right, whether express or implied, of an Owner to play golf, have access to the planned golf course, become a member of the Club, require the Declarant to construct or maintain the area as a golf course, or otherwise impose any obligation on Declarant relating in any way to the proposed golf course. All

arrangements relating to any Owner and the planned golf course must be in writing signed by the owner or operator of the planned golf course and shall be separate and apart from the Iron Horse Documents. The Club has the exclusive right to determine from time-to-time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used. By way of example, but not limitation, the Club has the right to approve users and determine eligibility for use, to reserve use rights for future purchasers of Lots, to terminate any or all use rights, to change, eliminate or cease operation of any or all of the Club Property, to transfer any or all of its rights to the Club Property or the operation thereof to anyone and on any terms which it deems appropriate, to limit the availability of use privileges, and to require the payment of a purchase price, initiation fee, membership deposit, dues and other charges for use privileges. OWNERSHIP OF A LOT OR ANY PORTION OF THE PROPERTY OR MEMBERSHIP IN THE IRON HORSE ASSOCIATION DOES NOT GIVE ANY VESTED RIGHT OR EASEMENT, PRESCRIPTIVE OR OTHERWISE, TO USE THE CLUB PROPERTY, OR TO ACQUIRE A MEMBERSHIP IN THE CLUB AND DOES NOT GRANT ANY OWNERSHIP OR MEMBERSHIP INTEREST IN THE CLUB OR THE CLUB PROPERTY.

Section 12.2 *Acknowledgments.* Each Owner, by acceptance of a deed or recorded contract of sale to a Lot acknowledges:

(a) That privileges to use the Club Property shall be subject to the terms and conditions of the membership documents for the Club, as the same may be amended from time to-time (the "Membership Plan Documents"). Acquisition of a membership in the Club requires the payment of a membership purchase price called a membership contribution or membership deposit, and membership dues, fees and charges. These amounts shall be determined by the Declarant and/or the Club as set forth in the Membership Plan Documents for the Club. Notwithstanding the fact that the Club Property is open space or a recreation area for purposes of applicable zoning ordinances and regulations, each Owner by acquisition of title to a Lot releases and discharges forever the Declarant, the Club and their partners, officers, directors, employees, agents and affiliates, from: (1) any claim that the Club Property is, or must be, owned and/or operated by the Iron Horse Association or the Declarant, and (2) any claim that the Owners are entitled to use the Club Property by virtue of their ownership of a Lot without acquiring a membership in the Club, paying the applicable membership contribution or membership deposit, and dues, fees and charges established by the Club from time-to-time, and complying with the terms and conditions of the Membership Plan Documents for the Club.

Each Owner and the Iron Horse Association shall jointly and severally indemnify, defend, and hold harmless the Declarant, its partners, employees, agents, directors, shareholders, officers and affiliates and their successors and assigns, against and in respect of, and to reimburse the Declarant, its partners, employees, agents, directors, shareholders, officers and affiliates on demand for, any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including, but not limited to, interest, penalties, attorney and paralegal fees and disbursements (even if incident to any appeals), that the Declarant, its partners, employees, agents, directors, shareholders, officers and affiliates shall incur or suffer,

which arise out of, result from, or relate to any claim that because the Club Property is deemed to be open space or a recreation area for purposes of applicable zoning ordinances and regulations, the Club Property must be owned and/or operated by the Iron Horse Association or the Declarant and/or that Owners may use the Club Property without acquiring a membership in the Club pursuant to the Club's Membership Plan Documents and paying the membership contribution or membership deposit, and dues, fees and charges established by the Club from time-to-time.

(b) That any entry upon the Club Property without permission of the Club may be deemed a trespass, and each Owner shall refrain from, and shall cause all occupants of such Owner's Lot, their guests and invitees to refrain from, any unauthorized entry upon the Club Property.

(c) That the proximity of Lots and Common Area to the Club Property results in certain foreseeable risks, including the risk of damage or injury from errant golf balls, and that each Owner's use and enjoyment of his or her Lot and the Common Area may be limited as a result and that neither the Iron Horse Association, Declarant nor the Club shall have any obligation to take steps to remove or alleviate such risks, nor shall they have any liability to any Owner or occupant of any Lot, their guests or invitees, for damage or injury resulting from errant golf balls being hit upon any Lots or Common Area.

(d) That the Club and its designees may add to, remove or otherwise modify the landscaping, trees, and other features of the Club Property, including changing the location, configuration, size and elevation of bunkers, fairways and greens and constructing fences, and that neither the Club, Declarant, nor the Iron Horse Association, shall have any liability to Owner as a result of such modifications to the Club Property.

(e) That there are no express or implied easements over the Club Property for view purposes, and no guarantee or representation is made by Declarant or any other person that any view over and across the Club Property will be preserved without impairment, and that neither the Club, Declarant nor the Iron Horse Association shall have any obligation to take any actions, including pruning or thinning trees or other landscaping, to preserve views over the Club Property.

(f) That no representations or warranties which are inconsistent with this Section, either verbal or written, have been made or are made by Declarant or the Iron Horse Association or by any person acting on behalf of any of the foregoing.

(g) That Club may own one or more lakes on the Property. Notwithstanding the ownership of such lakes, the Club may use any and all lakes on the Property for the purpose of irrigating and maintaining the Club Property with the result that the water level in such lakes may from time-to-time vary. Each Owner of a Lot acknowledges such right on the part of the Club and agrees not to commence any cause of action or other proceeding involving the Club based on the exercise of such right or otherwise

interfere therewith.

In the event there are insufficient water levels to provide the necessary irrigation needs of the Club Property and all other areas of the Property, subject to applicable governmental permits and requirements, the Club Property shall have first priority of irrigation, followed by the Common Area, and then the Lots.

Section 12.3. *Rights of Access and Parking.* Declarant grants to the Club and members of the Club (regardless of whether such Persons are Members hereunder), their guests and invitees and the employees, agents, contractors, and designees of the Club a non-exclusive easement of access and use over all roadways located within the Property reasonably necessary to travel to and from the entrance to Iron Horse from and to the Club Property, respectively, and, further, over those portions of the Property (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Club Property. Without limiting the generality of the foregoing, members of the Club and permitted members of the public shall have the right to park their vehicles on the roadways located within the Property at reasonable times before, during, and after tournaments and other similar functions held at the Club Property.

Section 12.4. *Assumption of Risk and Indemnification.* Each Owner by its purchase of a Lot expressly assumes the risks associated with the Club Property (regardless of whether the Owner is using the Club Property) and agrees that neither Declarant, the Club, the Iron Horse Association, nor any of their affiliates or agents nor any other entity designing, constructing, owning or managing the Club Property or planning or constructing the Owner's Lot shall be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, loss of view, noise pollution, or other visual or audible offenses, or trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or Common Area to the Club Property, including, without limitation, any claim arising, in whole or in part, from the negligence of Declarant, or any other entity designing, constructing, owning or managing the Club Property or planning or constructing the Owner's Lot. Owner hereby agrees to indemnify and hold harmless Declarant and any other entity owning or managing the Club Property against any and all claims by Owner's guests and invitees.

### **ARTICLE XIII INSURANCE AND FIDELITY BONDS**

Section 13.1. *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, the Manager and 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 13.2. *General Insurance Provisions.* All such insurance coverage obtained by the Board of Directors will be governed by the following provisions:

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

13.2.2. 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 13.3. *Physical Damage Insurance on Common Area.* The Iron Horse 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 13.4. *Liability Insurance.* The Iron Horse 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 Iron Horse Association, the Manager, 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 Iron Horse and any other areas under the control of the Iron Horse Association. Declarant will be included in the coverage as an additional insured in Declarant's capacity as an Owner or Director. The Owners will be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area.

The Board of Directors will review the coverage limits from time to time, but, generally, the Board will carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to Iron Horse, and in no event will such coverage be less than \$1,000,000.00 for all claims for bodily injury or property damage arising out of one occurrence.

Section 13.5. *Fidelity Insurance.* Fidelity bonds or insurance coverage will be maintained by the Iron Horse Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees, and on the part of all others who handle or are responsible for handling the funds of or administered by the Iron Horse Association. In addition, if responsibility for handling funds is delegated to a Manager, such bonds or insurance coverage will be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity bonds or insurance coverage will name the Iron Horse Association as an obligee or insured and will be written in such amount as the Board may determine appropriate.

Section 13.6. *Provisions Common to Physical Damage Insurance, Liability Insurance, and Fidelity Insurance.* Any insurance coverage obtained by the Iron Horse Association under the provisions of this Article above will be subject to the following provisions and limitations:

13.6.1. The named insured under any such policies will include Declarant, until all of the Lots in Iron Horse have been conveyed, and the Iron Horse Association, as attorney-in-fact for the Owners, or the authorized representative of the Iron Horse Association (including any trustee

with whom the Iron Horse Association may enter into any insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee"), who will have exclusive authority to negotiate losses under such policies.

13.6.2. Each Owner will be an insured person with respect to liability arising out of the Owner's interest in the Common Area or membership in the Iron Horse Association.

13.6.3. The policies will contain a waiver by the insurer of any right to claim by way of subrogation against Declarant, the Board of Directors, the Iron Horse Association, the Manager, and any Owner and their respective agents, employees, or tenants, and in the case of Owners, members of their households.

Section 13.7. *Personal Liability Insurance of Officers and Directors.* To the extent obtainable at reasonable cost, appropriate officers' and directors' personal liability insurance will be obtained by the Iron Horse Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Iron Horse Association.

Section 13.8. *Worker's Compensation Insurance.* The Iron Horse Association will obtain worker's compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 13.9. *Other Insurance.* The Iron Horse Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it will deem appropriate with respect to the Iron Horse Association's responsibilities and duties.

Section 13.10. *Insurance Obtained by Owners.* Each Owner will have the right to obtain insurance for such Owner's benefit, at such Owner's expense, covering the Owner's Lot and Improvements, personal property and personal liability. However, no insurance coverage obtained by an Owner will operate to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Iron Horse Association or cause the diminution or termination of that coverage. Any such insurance obtained by an Owner will include a waiver of the particular insurance company's right of subrogation against Declarant, the Board of Directors, the Iron Horse Association, the Manager, and other Owners.

## ARTICLE XIV IRON HORSE ASSOCIATION AS ATTORNEY-IN-FACT

Each and every Owner hereby irrevocably constitutes and appoints the Iron Horse Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on the Common Area upon damage or destruction as provided in Article XV or a complete or partial taking as provided in Article XVI below. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner will constitute appointment of the Iron Horse Association as attorney-in-fact as provided in

this Article. As attorney-in-fact, the Iron Horse Association will have full and complete authorization, right, and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner that may be necessary or appropriate to exercise the powers granted to the Iron Horse Association as attorney-in-fact.

## ARTICLE XV DAMAGE OR DESTRUCTION

### Section 15.1. *Damage or Destruction of Common Area.*

15.1.1. *Estimate of Damages or Destruction.* As soon as practical after an event causing damage to or destruction of any part of the Common Area, unless such damage or destruction is minor, the Iron Horse Association will obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Area so damaged or destroyed. "Repair and reconstruction" as used in this Article will mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

15.1.2. *Repair and Reconstruction.* As soon as practical after obtaining estimates, the Iron Horse Association will diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Iron Horse Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner will be necessary. Assessments of the Iron Horse Association will not be abated during the period of insurance adjustments and repair and reconstruction.

15.1.3. *Funds for Repair and Reconstruction.* The proceeds received by the Iron Horse Association from any hazard insurance will be used for the purpose of repair, replacement and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Iron Horse Association may, pursuant to Section 9.5, levy, assess and collect in advance from all Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

15.1.4. *Disbursement of Funds for Repair and Reconstruction.* The insurance proceeds held by the Iron Horse Association and the amounts received from the Special Assessments provided for in Section 9.5 constitute a fund for the payment of the costs of repair and reconstruction after casualty. It will be deemed that the first money disbursed in payment for the costs of repair and reconstruction will be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance will be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Iron Horse Association under Section 9.5, or, if no Special Assessments were made, then in proportionate shares on the basis of the allocation to the Owners of Common Expenses under Section 9.3.2, first to the Mortgagees and then to the Owners, as their interests appear.

15.1.5. *Decision Not to Rebuild.* If, during the Period of Declarant Control, Declarant, and, at all times, Owners representing at least 67% of the votes in the Iron Horse Association agree in writing not to repair and reconstruct damage to the Common Area and no alternative Improvements are authorized, then and in that event the Property will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Iron Horse Association in a neat and attractive condition, and any remaining insurance proceeds will be distributed in proportionate shares on the basis of the allocation to the Owners of the Common Expenses under Section 9.3.2, first to the Mortgagees and then to the Owners, as their interests appear.

Section 15.2. *Damage or Destruction Affecting Lots.* In the event of damage or destruction to the Improvements located on any Lot, the Owner thereof will promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within 180 days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than 90 days, then the Iron Horse Association may, after notice and hearing as provided in the Bylaws, impose a fine accruing at the rate of \$100.00 per day or such other rate imposed by the Board in compliance with the Act, charged against the Owner of the Lot until repair and reconstruction is commenced, unless the Owner can prove to the satisfaction of the Iron Horse Association that such failure is due to circumstances beyond the Owner's control. Such fine will be a Default Assessment and lien against the Lot as provided in Section 9.6 above.

## ARTICLE XVI CONDEMNATION

Section 16.1. *Rights of Owners.* Whenever all or any part of the Common Area is taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, each Owner will be entitled to notice of the taking, but the Iron Horse Association will act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 16.2. *Partial Condemnation; Distribution of Award; Reconstruction.* The award made for such taking will be payable to the Iron Horse Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which Improvements have been constructed, then, unless, within 60 days after such taking, Declarant, during the Period of Declarant Control, and, at all times, Owners representing at least 67% of the votes in the Iron Horse Association otherwise agree, the Iron Horse Association will restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors. If such Improvements are to be repaired or restored, the provisions in Article XV above regarding the disbursement of funds with respect to casualty damage or destruction that is to be repaired will apply. If the taking does not involve any Improvements on the Common Area, or if there is a decision made not to repair or



restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds will be distributed in proportionate shares on the basis of the allocation to the Owners of Common Expenses under Section 9.3.2, first to the Mortgagees and then to the Owners, as their interests appear.

Section 16.3. *Complete Condemnation.* If all of Iron Horse is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration will terminate, and the portion of the condemnation award attributable to the Common Area will be distributed as provided in Section 16.2.

## ARTICLE XVII EXPANSION AND WITHDRAWAL

Section 17.1. *Reservation of Right to Expand.* Declarant reserves the right, but will not be obligated, to expand the effect of this Declaration to include all or part of the Expansion Property. The consent of the existing Lot Owners and Mortgagees will not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option. Declarant will have the unilateral right to transfer to any other person this right to expand by an instrument duly recorded. Declarant will pay all taxes and other governmental assessments relating to the Expansion Property as long as Declarant is the owner of such property.

Section 17.2. *Completion of Expansion.* When Declarant has determined that no further property shall be added to the Project, Declarant shall notify the Iron Horse Association in writing. Until such notice is given, Declarant retains the right to designate additional property as Expansion Property.

Section 17.3. *Declaration of Annexation.* Any expansion of the Project may be accomplished by recording a Declaration of Annexation and one or more supplemental Plats in the records of the Clerk and Recorder of Flathead County, Montana, before the expiration of the Period of Declarant Control. The Declaration of Annexation will describe the real property to be expanded, submitting it to these Covenants and provide for voting rights and Assessment allocations as provided in this Declaration. Specifically, each new Lot in the annexed area will be allocated one vote and liability for the Common Expenses equal to the liability allocated to each of the other Lots, and the proportionate voting interest and allocation of Common Expenses for the other Lots will be adjusted accordingly. Such Declaration of Annexation will not require the consent of Owners, the Iron Horse Association, or the Board of Directors. Any such expansion will be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.

Upon the recordation of any such Declaration of Annexation, the definitions used in this Declaration will be expanded automatically to encompass and refer to Iron Horse as expanded. Such Declaration of Annexation may add supplemental covenants peculiar to the Expansion Property in question, or delete or modify provisions of this Declaration as it applies to the Expansion Property added. However, this Declaration may not be modified with respect to that portion of the Property

already subject to this Declaration, except as provided below for amendment.

Section 17.4. *Withdrawal of Property.* Declarant reserves the right to withdraw from the jurisdiction of these Covenants any parcel of the Property (including the Expansion Property), provided, however, that no parcel may be withdrawn after it has been conveyed to a purchaser.

## ARTICLE XVIII MORTGAGEE PROTECTIONS

### Section 18.1. *First Mortgagees' Rights.*

18.1.1. *Payment of Taxes and Insurance.* First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area or Improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area. First Mortgagees making such payments will be owed immediate reimbursement from the Iron Horse Association.

18.1.2. *Cure of Delinquent Assessments.* A First Mortgagee will be entitled to cure any delinquency of the Owner of the Lot encumbered by the First Mortgagee in the payment of Assessments. In that event, the Eligible Mortgage Holder will be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 18.2. *Title Taken by First Mortgagee.* Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgage, including foreclosure of the First Mortgage, will be liable for all Assessments due and payable as of the date title to the Lot vests in the First Mortgagee under the statutes of Montana governing foreclosures. Except as provided in the Act, such First Mortgagee will not be liable for any unpaid dues and charges attributable to the Lot which were due and payable prior to the date such title vests in the First Mortgagee.

## ARTICLE XIX ENFORCEMENT OF COVENANTS

Section 19.1. *Violations Deemed a Nuisance.* Every violation of this Declaration or any other of the Iron Horse 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 19.2. *Compliance.* Each Owner or other occupant of any part of the Property will comply with the provisions of the Iron Horse Documents as the same may be amended from time to time.

Section 19.3. *Failure to Comply.* Failure to comply with the Iron Horse 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 19.4. *Who May Enforce.* Any action to enforce the Iron Horse Documents may be brought by Declarant, the Board, or the Manager in the name of the Iron Horse 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 Iron Horse Documents, then the aggrieved Owner may bring such an action.

Section 19.5. *Nonexclusive Remedies.* All the remedies set forth herein are cumulative and not exclusive.

Section 19.6. *No Waiver.* The failure of the Board of Directors, Declarant, the Manager, or any aggrieved Owner to enforce the Iron Horse 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 Iron Horse Documents at any future time.

Section 19.7. *No Liability.* No member of the Board of Directors, the Declarant, the Manager or any Owner will be liable to any other Owner for the failure to enforce any of the Iron Horse Documents at any time.

Section 19.8. *Recovery of Costs.* If legal assistance is obtained to enforce any of the provisions of the Iron Horse Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Iron Horse Documents or the restraint of violations of the Iron Horse Documents, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees (and legal assistant fees) as may be incurred, or if suit is brought, as may be determined by the court.

## ARTICLE XX RESOLUTION OF DISPUTES

If any dispute or question arises between Members or between Members and the Iron Horse Association or relating to the interpretation, performance or nonperformance, violation, or enforcement of the Iron Horse 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 XXI DURATION OF THESE COVENANTS AND AMENDMENT

Section 21.1. *Term.* This Declaration and any amendments or supplements hereto will remain in effect from the date of recordation until the 50th 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 21.2. *Amendment.* Subject to Section 21.3, 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:

21.2.1. *Prior to Sale of Lots.* Prior to the sale of any Lot (excluding any sale to a Successor Declarant), 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.

21.2.2. *After Sale of Lots but During Period of Declarant Control.* After the sale of a Lot (excluding a sale to a Successor Declarant) but before expiration of the Period of Declarant Control, Declarant (including 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 Iron Horse Association. Unless written objection is received by 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.

21.2.3. *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 Iron Horse 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 Iron Horse Association stating that the required number of consents of Owners were obtained.

Section 21.3. *Declarant's Approval.* Notwithstanding the provisions of Section 21.2, 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 21.4. *City's Approval.* Notwithstanding the provisions of Section 21.2, the covenants contained herein which are required to be contained herein by the Conditions of Approval of Kinnikinnik Phase I by the Whitefish City Council, dated May 15, 1995, or by the Conditions of Approval for Iron Horse, Phase II dated July 21, 1997, shall not be amended or repealed without the prior written consent of the Whitefish City Council.

Section 21.5. *Effect of Amendments.* Amendments made pursuant to this Section will inure to the benefit of and be binding upon all Owners, their families, tenants, guests, invites 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 XXII MISCELLANEOUS PROVISIONS

Section 22.1. *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 22.2. *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 22.3. *Headings.* The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of this Declaration.

Section 22.4. *Waiver.* No failure on the part of the Iron Horse Association or the Board to give notice of 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 Iron Horse Association.

Section 22.5. *Limitation of Liability.* Neither the Declarant, the Iron Horse Association nor any partner, officer or member of either the Declarant 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 Iron Horse Documents if the action or failure to act was made in good faith. The Iron Horse 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 22.6. *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 22.7. *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.

IRON HORSE AT WHITEFISH, LLC

By: /s/ Scott R. Fitzgerald  
Its: Vice President

STATE OF TEXAS                    )  
  : ss  
County of DALLAS                )

On this 1st day of March, 1999, before me, the undersigned, a Notary Public for the State aforesaid, personally appeared Scott R. Fitzgerald, known to me to be the Vice President of IRON HORSE AT WHITEFISH, LLC, the entity that executed the within instrument, and acknowledged to me that such entity executed the same.

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

(Seal)

/s/ Mary C. Mason  
Notary Public for the State of TEXAS  
Residing at 18711 Radston Circle, Dallas, TX. 75252  
My Commission expires 4/24/2002

EXHIBIT A

TO

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR IRON HORSE

Legal Description of the Initial Property Subject to Declaration:

Lot A-1 and Lot A-2 of Iron Horse, Phase I, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder, Flathead County, Montana.

All of Iron Horse, Phase 2, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder, Flathead County, Montana.

EXHIBIT B

TO  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR IRON HORSE

Legal Description of the Initial Common Area:

The areas shown on the plat of Iron Horse, Phase 2 as areas A, B, C, D, E, F, G, H, I, and J are Common Areas.

The private roads identified on the plat of Iron Horse, Phase 2 as Prairiesmoke Circle, Yarrow Lane, Yampah Lane, Shooting Star Circle, and the private portion of Iron Horse Drive are Common Areas.

NOTE: The Lots described on the plat of Iron Horse, Phase I as follows:

Golf Course (A)  
Golf Course (B)  
Golf Course (C)

are not considered to be Common Area. See Article XII, above.



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