CITY COUNCIL REGULAR MEETING AGENDA

The following is a summary of the items to come before the City Council at its regular session to be held on Monday, October 2, 2017, at 7:10 p.m., at City Hall, 418 E. 2nd Street, 2nd Floor.

Ordinance numbers start with 17-27. Resolution numbers start with 17-45.

1) CALL TO ORDER

2) PLEDGE OF ALLEGIANCE

3) PRESENTATIONS
   a) Recognition of Services Awards for Life Saving Measures

4) COMMUNICATIONS FROM THE PUBLIC — (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments, but may respond or follow-up later on the agenda or at another time. The Mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)

5) COMMUNICATIONS FROM VOLUNTEER BOARDS

6) CONSENT AGENDA
   a) Minutes from September 18, 2017 Regular Session (p.15)
   b) Ordinance 17-26; An Ordinance Amending Title 10 Chapter 1, Building Codes of the Whitefish City Code (Second Reading) (p.23)
   c) Final Plat for Phase II of High Point on 2nd (formerly known as Second Street Residences); WFP 17-05 (p.38)
   d) Final Plat for Riverview Meadows (formerly known as MKay Enterprises); WFP 17-06 (p.147)
   e) Consideration of approving an application from Terra Designworks, LLC on behalf of Scott & Tracey Gerber for Whitefish Lake Lakeshore Permit (WLP 17-W27) at 1816 Lacy Lane to install stone stairs within the Lakeshore Protection Zone (p.292)

7) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant’s land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)
   a) Resolution 17-__; A Resolution establishing an administrative processing fee for special event permits (p.309)
   b) Ordinance 17-__; An Ordinance rezoning approximately 5.3 acres of land located at 2385 Mountain Shadows Drive in Section 14, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, from County R-3 (One-Family Residential) to Whitefish WR-1 (One-Family Residential District), and adopting findings with respect to such rezone (WZC 17-16) (First Reading) (p.313)
   c) Ordinance 17-__; An Ordinance removing a Planned Unit Development overlay on approximately 27 acres of land along Big Mountain Road known as Tract 2B in Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, and reverting the
property to its original zoning of Whitefish WLR (One-Family Limited Residential District), and adopting findings, formerly known as Coldwater Basin (WZC 17-17) (First Reading) (p.352)

d) Ordinance 17-__; An Ordinance removing a Planned Unit Development overlay on approximately 228.5 acres of land along Big Mountain Road known as Tracts 2C, 4, 5, 5AF, 5B, 5C, 5E, 6A, 6CB, 6cD, 6C and 6D in Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, and reverting the property to its original zoning of Whitefish WA (Agricultural District) and WRR-1 (Low-Density Resort Residential District), and adopting findings (WZC 17-18) (First Reading) (p.374)

e) Ordinance 17-__; An Ordinance rezoning approximately 14.08 acres of land located at 95 Karrow Avenue in Section 35 and 36, Township 31 North, Range 22 West, P.M.M, Flathead County, Montana, from WI (Industrial District) to WI-T (Industrial Transitional District) and WR-3 (Neighborhood Mixed-Use Transitional), and adopting findings with respect to such rezone. (WCZ 17-19) (First Reading) (p.396)

8) COMMUNICATIONS FROM CITY ATTORNEY
   a) Ordinance 17-__; An Ordinance adding a new section to Chapter 1 of Title 5, Police Regulations, of the Whitefish City Code, expressly authorizing Whitefish police officers to make arrests within five miles of City Limits (First Reading) (p.437)

9) COMMUNICATIONS FROM CITY MANAGER
   a) Written report enclosed with the packet. Questions from Mayor or Council? (p.441)
   b) Other items arising between September 27th and October 2nd
   c) Consideration and direction to continue with the process to include the Snow Lot in the TIF District by first preparing an amendment to the Downtown Master Plan (p.442)

10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
   a) Consideration of appointing two Council Members to the PUD Working Group

11) ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)
The following Principles for Civil Dialogue are adopted on 2/20/2007 for use by the City Council and by all boards, committees and personnel of the City of Whitefish:

- We provide a safe environment where individual perspectives are respected, heard, and acknowledged.

- We are responsible for respectful and courteous dialogue and participation.

- We respect diverse opinions as a means to find solutions based on common ground.

- We encourage and value broad community participation.

- We encourage creative approaches to engage public participation.

- We value informed decision-making and take personal responsibility to educate and be educated.

- We believe that respectful public dialogue fosters healthy community relationships, understanding, and problem-solving.

- We acknowledge, consider and respect the natural tensions created by collaboration, change and transition.

- We follow the rules and guidelines established for each meeting.
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September 27, 2017

The Honorable Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and City Councilors:

Monday, October 2, 2017 City Council Agenda Report

There is no Work Session. Food will not be provided.

The regular Council meeting will begin at 7:10 p.m.

CONSENT AGENDA

a) Minutes from September 18, 2017 Regular Session (p.15)
b) Ordinance 17-26; An Ordinance Amending Title 10 Chapter 1, Building Codes of the Whitefish City Code (Second Reading) (p.23)
c) Final Plat for Phase II of High Point on 2nd (formerly known as Second Street Residences); WFP 17-05 (p.38)
d) Final Plat for Riverview Meadows (formerly known as MKay Enterprises); WFP 17-06 (p.147)
e) Consideration of approving an application from Terra Designworks, LLC on behalf of Scott & Tracey Gerber for Whitefish Lake Lakeshore Permit (WLP 17-W27) at 1816 Lacy Lane to install stone stairs within the Lakeshore Protection Zone (p.292)

Item ‘b’ is a Legislative matter; Items ‘c-e’ are Quasi-Judicial

PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant’s land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)
a) Resolution 17-__; A Resolution establishing an administrative processing fee for special event permits (p.309)

From Attorney Angela Jacobs staff report.

Introduction/History - Courts have uniformly held that while a government cannot profit from imposing licensing or permit fees, it can charge a fee intended to cover the administrative cost of issuing the permit or license. Similarly, §§ 7-1-4123(7) and 7-6-4013, MCA, empower municipalities to impose a fee for the provision of a service and grant municipalities the authority to regulate, establish and change fees that are imposed for services, as long as such fees are reasonable and related to the cost of providing such a service.

On August 21, 2017, the City Council passed on second reading Ordinance 17-23, which amended the ordinance governing special event permits. In accordance with statutory and case law, § 7-4-7-A of Ordinance 17-23 provides the City Manager will charge an applicant for a special event permit an administrative processing fee as established by the City Council by resolution.
**Current Report** - Previously, the City charged a fee for special event permits based upon whether the event was “small,” “annual” or “recurring.” Events were apparently grouped into these three categories based upon the amount of City services required for the event. However, the City Council chose not to adopt a “department services fee” as part of Ordinance 17-23. As such, the fee for a special event permit should reflect only the administrative cost of issuing the permit.

I asked those employees who are involved in processing a special event permit to estimate the amount of time they spent on each application. While certain applications may take more time than others, we were able to arrive at a reasonable estimate. I then used each employee’s hourly rate to estimate the administrative cost to the City. The total cost of processing one special permit application is approximately $110.00.

**Financial requirements/Impacts** - There will likely be no significant financial impacts of establishing an administrative processing fee. As noted above, the fee is intended to offset the cost to the City of using staff time to process applications.

**RECOMMENDATION:** Staff respectfully recommends City Council approve Resolution 17-__: A Resolution establishing an administrative processing fee for special event permits.

**This matter is a Legislative matter.**

b) Ordinance 17-__: An Ordinance rezoning approximately 5.3 acres of land located at 2385 Mountain Shadows Drive in Section 14, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, from County R-3 (One-Family Residential) to Whitefish WR-1 (One-Family Residential District), and adopting findings with respect to such rezone (WZC 17-16) (First Reading) (p.313)

From Senior Planner Wendy Compton-Ring’s report.

**Summary of Requested Action:** This is a request by the City of Whitefish to rezone one parcel annexed into the City from County R-3 (One-Family Residential) to WR-1 (One-Family Residential District). The subject property is located at 2385 Mountain Shadows Drive and totals approximately 5.3 acres in size.
Planning & Building Department Recommendation: Staff recommended approval of the above referenced rezone.

Public Hearing: No members of the public spoke at the public hearing. The draft minutes from the Planning Board for this item are attached to this packet.

Planning Board Action: The Whitefish Planning Board met on September 21, 2017 and considered the requested rezone. Following the public hearing, the Planning Board recommended approval of the above referenced rezone voting 5-1 (Hessellund dissenting) and adopted the staff report as findings of fact.

RECOMMENDATION: Staff respectfully recommends Council approve Ordinance 17-__; An Ordinance rezoning approximately 5.3 acres of land located at 2385 Mountain Shadows Drive in Section 14, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, from County R-3 (One-Family Residential) to Whitefish WR-1 (One-Family Residential District), and adopting findings with respect to such rezone

This matter is a Quasi-Judicial matter.

c) Ordinance 17-__ : An Ordinance removing a Planned Unit Development overlay on approximately 27 acres of land along Big Mountain Road known as Tract 2B in Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, and reverting the property to its original zoning of Whitefish WLR (One-Family Limited Residential District), and adopting findings, formerly known as Coldwater Basin (WZC 17-17) (First Reading) (p.352)

From Senior Planner Compton-Ring’s transmittal report.

Summary of Requested Action: This is a request by the City of Whitefish to rezone one parcel with the zoning designation of WLR/WPUD (One-Family Limited Residential District with a Planned Unit Development overlay) to WLR (One-Family Limited Residential District) in order to remove an expired PUD overlay. The subject property is off Big Mountain Road and total approximately 27 acres.
Planning & Building Department Recommendation: Staff recommended approval of the above referenced rezone.

Public Hearing: No one from the public. The draft minutes from the Planning Board for this item are attached to this packet.

Planning Board Action: The Whitefish Planning Board met on September 21, 2017 and considered the requested rezone. Following the public hearing, the Planning Board unanimously recommended approval of the above referenced rezone and adopted the staff report as findings of fact.

RECOMMENDATION: Staff respectfully recommends Council approve Ordinance 17-__:
An Ordinance removing a Planned Unit Development overlay on approximately 27 acres of land along Big Mountain Road known as Tract 2B in Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, and reverting the property to its original zoning of Whitefish WLR (One-Family Limited Residential District), and adopting findings, formerly known as Coldwater Basin.

This matter is a Quasi-Judicial matter.

d) Ordinance 17-__; An Ordinance removing a Planned Unit Development overlay on approximately 228.5 acres of land along Big Mountain Road known as Tracts 2C, 4, 5, 5AF, 5B, 5C, 5E, 6A, 6CB, 6CD, 6C and 6D in Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, and reverting the property to its original zoning of Whitefish WA (Agricultural District) and WRR-1 (Low-Density Resort Residential District), and adopting findings (WZC 17-18) (First Reading) (p.374)

From Senior Planner Wendy Compton-Ring’s transmittal report.

Summary of Requested Action: This is a request by the City of Whitefish to rezone twelve parcels with the zoning designations of WA/WPUD & WRR-1/WPUD (Agricultural District with a Planned Unit Development overlay) and (Low-Density Resort Residential District with a Planned Unit Development overlay) to WA (Agricultural District) and WRR-1 (Low-Density Resort Residential District) in order to remove an expired PUD overlay. The subject properties are unaddressed, 3301 Big Mountain Road and 3300 Whitefish Lookout Road and total approximately 228.5 acres.
**Planning & Building Department Recommendation:** Staff recommended approval of the above referenced rezone.

**Public Hearing:** No one from the public. The draft minutes from the Planning Board for this item are attached to this packet.

**Planning Board Action:** The Whitefish Planning Board met on September 21, 2017 and considered the requested rezone. Following the public hearing, the Planning Board unanimously recommended approval of the above referenced rezone and adopted the staff report as findings of fact.

**RECOMMENDATION:** Staff respectfully recommends Council approve Ordinance 17-__; An Ordinance removing a Planned Unit Development overlay on approximately 228.5 acres of land along Big Mountain Road known as Tracts 2C, 4, 5AF, 5B, 5C, 5E, 6A, 6CB, 6cD, 6C and 6D in Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, and reverting the property to its original zoning of Whitefish WA (Agricultural District) and WRR-1 (Low-Density Resort Residential District), and adopting findings.

This matter is a Quasi-Judicial matter.

e) Ordinance 17-__; An Ordinance rezoning approximately 14.08 acres of land located at 95 Karrow Avenue in Section 35 and 36, Township 31 North, Range 22 West, P.M.M, Flathead County, Montana, from WI (Industrial District) to WI-T (Industrial Transitional District) and WR-3 (Neighborhood Mixed-Use Transitional), and adopting findings with respect to such rezone. (WCZ 17-19) (First Reading) (p.396)

From Senior Planner Wendy Compton-Ring’s transmittal report.

**Summary of Requested Action:** This is a request by 95 Karrow llc to rezone Tract 1 of COS 9540 from WI (Industrial District) to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed-Use Transitional) as part of the implementation of Highway 93 W Corridor Plan approved by the Whitefish City Council in 2015 and the zoning districts created by the Council in 2016. The subject properties are located at 95 Karrow Avenue and total approximately 14.08 acres.
Planning & Building Department Recommendation: Staff recommended approval of the above referenced rezone.

Public Hearing: The applicant’s representative spoke in support of the request. Mayre Flowers, Citizens for a Better Flathead, handed out a letter at the meeting which is included in your packet. In response to these comments staff would note, the Water Quality Protection regulations apply across all zoning districts in the City and the rest of the comments from the letter are more specific to future development and will be addressed during the development review process rather than the rezone request. Staff would further point out that the comments were not relevant to the rezone review criteria but were directed at future development. No one else from the public spoke. The draft minutes from the Planning Board for this item are attached to this packet.

Planning Board Action: The Whitefish Planning Board met on September 21, 2017 and considered the requested rezone. Following the public hearing, the Planning Board unanimously recommended approval of the above referenced rezone and adopted the staff report as findings of fact.

RECOMMENDATION: Staff respectfully recommends Council approve Ordinance 17-__; An Ordinance rezoning approximately 14.08 acres of land located at 95 Karrow Avenue in Section 35 and 36, Township 31 North, Range 22 West, P.M.M, Flathead County, Montana, from WI (Industrial District) to WI-T (Industrial Transitional District) and WR-3 (Neighborhood Mixed-Use Transitional), and adopting findings with respect to such rezone.

This matter is a Quasi-Judicial matter.

COMMUNICATIONS FROM CITY ATTORNEY
a) Ordinance 17-__; An Ordinance adding a new section to Chapter 1 of Title 5, Police Regulations, of the Whitefish City Code, expressly authorizing Whitefish police officers to make arrests within five miles of City Limits (p.437)

From City Attorney Angela Jacobs staff report:

Introduction/History - Police officers generally may not make arrests outside their jurisdiction. Section 7-32-4301, MCA, however, allows a municipality to authorize its police officers to make arrests within five miles of its limits. To date, the City has not passed such an ordinance, instead relying upon Montana statutory and case law exemptions to the general jurisdictional rule. Despite the City’s ability to rely upon these exemptions, it is desirable to expressly authorize the City’s police officers to make arrests within five miles of City limits to minimize the possibility of wasting time and resources opposing jurisdictional challenges.

Current Report - The proposed ordinance provides the Whitefish Police Chief and all City police officers authority to make arrests within the City’s boundaries and within five miles of the City’s boundaries. The ordinance should foreclose any jurisdictional challenges for arrests made in that “donut” area.

It should be noted the City adopted the sub-section directly preceding the new sub-section pursuant to § 7-32-4302, MCA, which allows municipalities the power to enact ordinances to prevent acts or conduct calculated to disturb the peace. The statute provides that such an ordinance can only be enforced within three miles of City limits. However, a city
police officer acting within his or her territorial jurisdiction, including the five-mile “donut,” may arrest a person for violation of state law prohibiting offenses against public order.

**Financial requirements/Impact** - There will likely be no significant financial impacts of authorizing police officers to make arrests within five miles of City limits.

**RECOMMENDATION:** Staff respectfully recommends Council approve Ordinance 17-__; An Ordinance adding a new section to Chapter 1 of Title 5, Police Regulations, of the Whitefish City Code, expressly authorizing Whitefish police officers to make arrests within five miles of City Limits.

This matter is a Legislative matter.

COMMUNICATIONS FROM CITY MANAGER
a) Written report enclosed with the packet. Questions from Mayor or Council? (p.441)
b) Other items arising between September 27th and October 2nd
c) Consideration and direction to continue with the process to include the Snow Lot in the TIF District by first preparing an amendment to the Downtown Master Plan (p.442)

Please see Finance Director Dana Smith’s memo provided in the packet.

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
a) Consideration of appointing two Council Members to the PUD Working Group

ADJOURNMENT

Sincerely,
Adam M. Hammatt, City Manager
<table>
<thead>
<tr>
<th>Table 1: Common Motions Used in a Meeting.</th>
<th>Wording</th>
<th>Interrupt another speaker</th>
<th>Requires a second</th>
<th>Debatable</th>
<th>Amendable</th>
<th>Vote Required</th>
<th>Reconsider</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Privileged Motions</strong></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Fix time for next meeting (12)</td>
<td>&quot;I move that we meet next at...&quot;</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Adjourn</td>
<td>&quot;I move that we adjourn&quot;</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
<td>No</td>
</tr>
<tr>
<td>Take a recess (12)</td>
<td>&quot;I move that we recess. . .&quot;</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Majority</td>
<td>No</td>
</tr>
<tr>
<td>Raise a question of privilege</td>
<td>&quot;I raise to a question of privilege affecting the assembly&quot;</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>(1)</td>
<td>No</td>
</tr>
<tr>
<td>Call for the orders of the day</td>
<td>&quot;I call for the orders of the day&quot;</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>(1) (15)*</td>
<td>No</td>
</tr>
<tr>
<td><strong>Subsidiary Motions</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lay on the table</td>
<td>&quot;I move to lay the question on the table&quot; or &quot;I move that the motion be laid on the table&quot;</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
<td>(3)*</td>
</tr>
<tr>
<td>Previous question (to close debate)</td>
<td>&quot;I move the previous question&quot; or &quot;I move we vote immediately on the motion&quot;</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>2/3 of assembly</td>
<td>Yes</td>
</tr>
<tr>
<td>Limit-extend debate (12)</td>
<td>&quot;I move the debate be limited to. . .&quot; or &quot;I move that the speaker's time be extended by . . .&quot;</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>2/3 of assembly</td>
<td>Yes</td>
</tr>
<tr>
<td>Postpone to a definite time (12)</td>
<td>&quot;I move that the question be postponed until . . .&quot;</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Refer to a committee (12)</td>
<td>&quot;I move to refer the matter to the . . . committee&quot;</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Amendment to the main motion (4,3)</td>
<td>&quot;I move to amend by adding/striking the words. . .&quot;</td>
<td>No</td>
<td>Yes</td>
<td>(5)</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Postpone indefinitely (12)</td>
<td>&quot;I move that the motion be postponed&quot;</td>
<td>No</td>
<td>Yes</td>
<td>Yes (16)</td>
<td>No</td>
<td>Majority</td>
<td>(4)</td>
</tr>
<tr>
<td><strong>Main Motions</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Main Motion</td>
<td>&quot;I move that we...&quot;</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Incidental Motions</strong> (11)</td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suspension of rules</td>
<td>&quot;I move to suspend the rules so that. . .&quot;</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>(9)*</td>
<td>No</td>
</tr>
<tr>
<td>Request to withdraw a motion (13)</td>
<td>&quot;I move that I be allowed to withdraw the motion&quot;</td>
<td>*</td>
<td>*</td>
<td>No</td>
<td>No</td>
<td>Majority*</td>
<td>(3)</td>
</tr>
<tr>
<td>Objection to the consideration of a question (10)</td>
<td>&quot;I object to the consideration of the question&quot;</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>2/3 of assembly</td>
<td>(3)</td>
</tr>
<tr>
<td>Point of order</td>
<td>&quot;I rise to a point of order&quot; or &quot;Point of order!&quot;</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>(1)*</td>
<td>No</td>
</tr>
<tr>
<td>Parliamentary inquiry</td>
<td>&quot;I rise to a parliamentary inquiry&quot; or &quot;A parliamentary inquiry, please&quot;</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>(1)</td>
<td>No</td>
</tr>
<tr>
<td>Appeal to the chairperson</td>
<td>&quot;I appeal from the decision of the chair&quot;</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes*</td>
<td>No</td>
<td>(7)</td>
<td>Yes</td>
</tr>
</tbody>
</table>
### Table: Incidental Motions

<table>
<thead>
<tr>
<th>Wording</th>
<th>Interrupt another speaker</th>
<th>Requires a second</th>
<th>Debatable</th>
<th>Amendable</th>
<th>Vote Required</th>
<th>Reconsider</th>
</tr>
</thead>
<tbody>
<tr>
<td>Point of information</td>
<td>&quot;I rise to a point of information&quot; or &quot;A point of information, please&quot;</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No (1)</td>
<td>No</td>
</tr>
<tr>
<td>Division of assembly</td>
<td>&quot;Division!&quot; or &quot;I call for a division&quot;</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No (14)</td>
<td>No</td>
</tr>
<tr>
<td>Division of a question</td>
<td>&quot;I move to divide the motion so that the question of purchasing ... can be considered separately.&quot;</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Majority</td>
</tr>
<tr>
<td>Renewal Motions (8)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reconsider* (2)</td>
<td>&quot;I move to reconsider the vote on the motion relating to ...&quot;</td>
<td>No*</td>
<td>Yes (5) (16)</td>
<td>No</td>
<td>Majority</td>
<td>No</td>
</tr>
<tr>
<td>Take from table</td>
<td>&quot;I move to take from the table the motion relating to ...&quot;</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
</tr>
<tr>
<td>Rescind</td>
<td>&quot;I move to rescind the motion passed at the last meeting relating to ...&quot;</td>
<td>No</td>
<td>Yes</td>
<td>Yes (16)</td>
<td>Yes</td>
<td>(6) (3)</td>
</tr>
<tr>
<td>Discharge a committee</td>
<td>&quot;I move that the committee considering ... be discharged.&quot;</td>
<td>No</td>
<td>Yes</td>
<td>Yes (16)*</td>
<td>Yes</td>
<td>(6) (3)</td>
</tr>
</tbody>
</table>

* Refer to Robert's Rules of Order Newly Revised


1. The chair decides. Normally no vote is taken.
2. Only made by a member who voted on the prevailing side and is subject to time limits.
3. Only the negative vote may be reconsidered.
4. Only the affirmative vote may be reconsidered.
5. Debatable when applied to a debatable motion.
6. Majority with notice, or 2/3 without notice or majority of entire membership.
7. Majority or tie vote sustains the chair.
8. None of these motions (except Reconsider) are in order when business is pending.
10. Must be proposed before debate has begun or a subsidiary motion is stated by the chair (applied to original main motions).
11. The Incidental Motions have no precedence (rank). They are in order when the need arises.
12. A Main Motion if made when no business is pending.
13. The maker of a motion may withdraw it without permission of the assembly before the motion is stated by the chair.
14. The chair can complete a Division of the Assembly (standing vote) without permission of the assembly and any member can demand it.
15. Upon a call by a single member, the Orders of the Day must be enforced.
16. Has full debate. May go into the merits of the question which is the subject of the proposed action.
17. A 2/3 vote in negative needed to prevent consideration of main motion.
(This page left blank intentionally to separate printed sections)
1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Hildner, Feury, Barberis, Frandsen, Sweeney, and Williams. City Staff present were City Manager Hammatt attended at 8:30 pm., City Clerk Howke, City Attorney Jacobs, Finance Director Smith, Planning and Building Director Taylor, Public Works Director Workman, Parks and Recreation Director Butts, Fire Chief Page, and Senior Planner Compton-Ring. Approximately 15 people were in the audience.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld thanked Officer Veneman for his attendance and asked him to lead the audience in the Pledge of Allegiance. Mayor Muhlfeld also asked Officer Veneman to pass along to all the Law Enforcement personnel on behalf of the Council thanks very much for all their efforts over the past week. It’s very much appreciated.

City Manager Adam Hammatt is attending the Public Open House at the Performing Arts Center which started at 7:00 p.m. to provide the public a general update on what is happening with the recent school threats. We want to send our best as well to all the teachers, students and families in our neighboring community of Columbia Falls. We stand beside you.

3) COMMUNICATIONS FROM THE PUBLIC — (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments, but may respond or follow-up later on the agenda or at another time. The Mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)

Mayre Flowers, Citizens for a Better Flathead, 35 4th Street West, Kalispell, reported the County will be considering the Highway 93 entrance corridor zone on Thursday, September 28th. There will not be public comment, but there is at 8:45 an opportunity to speak prior to that hearing. She provided two discs, one includes all the documents they are considering part of the record for that hearing as well as the audio file of the Planning Director briefing the Commissioners on that zone. She will ask the Commissioners as they move forward and as they discuss, if they are going to make changes to the findings, if they are going to add additional information on which to base their decision to go back to a public hearing process so that the public can comment as well. Secondly Commissioner Krueger wanted suggestions on how to create a more appealing setback. She would like to provide the County the history of the landscaping on Highway 93 North from Highway 40. She thinks telling that story would be good for the Commissioners to understand that in an entrance corridor it’s not just that your bound by the existing buildings but you can be more creative. She also provided agendas to follow along with for the documents that are appended to the packet on the website.

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hildner reported the Climate Action Plan Committee will meet September 27th at 5:00.

Councilor Williams reported the Whitefish Affordable Housing Committee met and had their Open House Wednesday September 13th. There was great attendance and she is encouraging anybody who has questions or want to review the Housing Needs Assessment or any information we are dealing with
regarding this document to go online to whitefishhousing.com which has a lot of information and a series of surveys to take.

5) CONSENT AGENDA
   a) Minutes from September 5, 2017 Regular Session (p.16)

Councilor Hildner had a correction to page 6, last sentence of the page, ‘also partly the was’ needs to be changed to ‘also partly this was’.

    Councilor Hildner made a motion, second by Councilor Williams, to approve the Consent Agenda as amended. The motion passed unanimously.

6) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant’s land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)
   a) Ordinance No. 17-__; An Ordinance zoning text amendment to revise 11-2S, Planned Unit Development, to address blending of densities and other issues as recommended by the PUD Revision Ad Hoc Committee WTZA 17-02-CONTINUED (First Reading) (p.25)

    Councilor Hildner made a motion to remove from the table for further consideration Ordinance 17-25 to revisit Ordinance 17-26. The motion passed unanimously.

Director Taylor gave his staff report that is provided in the packet on the website.

Mayor Muhlfeld opened the Public Hearing

Judy Spivey, 725 Clearwater Drive, is not against change and growth. She doesn’t want Whitefish to become any town U.S.A. She urges the Council to accept the PUD re-write as submitted by the PUD Re-Write AD Hoc Committee. Judy questions who has the precedence here; the wishes, desires, hopes of Whitefish residents or the developer builders? She challenges the Council and Staff to be clear. Concerns for the present and future of the Whitefish majority are primary. She urges the Council to do what is right for the City. Developers, builder’s entrepreneurs all are doing their job, we must do our job. Clear concise accurate ordinance codes, rules and regulations are necessary and prudent. They help everybody and avoid angst.

Ann Moran, 432 W. 3rd Street, is a member of the former Highway 93 West Corridor Study Committee and works in real estate development, residential and commercial. She supports the work the Committee has done. She is concerned about the blended use aspect of what has come forward recently. Whether you are on the developer’s side or on the residential homeowner’s side there is no greater utility or benefit than predictability. It takes some courage to set things up but in the long run predictability is best for everybody. It’s the most practical useful thing. It is important now Whitefish’s point to sustain a sense of community here. She said there is a crying need for single family homes in this community. It is important when dealing with committees we appoint that spend a lot of time on something and bring something to the Council, you send a message you value and support the work that they do.

Rebecca Norton, 530 Scott Avenue, is in favor of the Committee’s recommendations as they stand. She likes the suggestion of making it a little bit easier to read. She would like to add a community benefit that would include sound mitigation. She appreciates the Committee’s work and for caring enough about the community.

Mayre Flowers, Citizens for a Better Flathead, 35 4th Street West, Kalispell, had a set of detailed comments that are appended to the packet on the website. What the Committee recommended is something that is very typical of what is being used elsewhere in the State and has merit for the Council
to consider. She believes the primary suggestion by the Planning Director to remove the recommendation for what can be blended within a residential zone essentially guts the heart of the work the Committee was asked to do. The solution they came up with was to allow the blending of densities only between zones that permit similar uses and to prevent the neighborhood incompatibility blending of commercial and residential uses. The proposed committee solution does allow for mixed use PUDs that generally incorporate within a commercial development zone from multi-family or single-family housing. By removing a residential PUD that limits the blending to only similar zones. When you blend a low-density residential with a high-density commercial you increase the density and will end up with more multi-family housing. A need to look at what type of multi-family housing is appropriate. She thinks the Council needs to ask of the Planning Staff to come back in another Work Session where the public has time to review it ahead of time. Give examples on how this will work? She is in support of the recommendations from the committee. She feels there are some areas that we need to go back and look at. The changes the Planning Office is proposing will get a lot higher density multi-family housing. We need to make sure that we are encouraging the best residential uses that the City wants. She thinks inclusion of the business services district should be removed from the PUD. It is inviting the County to use that as a tool to blend WB-2 and the Business Service District. She also would like the Council to think about neighborhood commercial. We need to make sure that we are not encouraging inappropriate commercial outside of our downtown core and our corridors where we already allow for it. The commercial services should be focused on our downtown. She would like to get rid of wording that says we are supporting what we have done in the past. The intent of PUDs is to encourage appropriate clustering away from environmentally sensitive areas not to evenly spread density. The water quality regulations say these water quality protection regulations shall apply as an overlay and in addition to the zoning of other regulations adopted by the City. You need to consider specific overlay district where you really want to focus on having a little more predictability and higher quality development. The suggestion by the Planning Staff to clarify language to say conditional uses are simply permitted, she thinks goes too far. The PUD should not be a loophole to avoid or skip what needs to be a zone change or a growth policy change. She disagrees with the analysis provided in the packet that says the changes to the residential PUD and the commercial PUD make it easier for development to apply for a residential PUD that spans multiple properties and may have different zoning without first having to go through a growth policy. The outcome should not be what the outcome is but it should be about the underlying zoning. It needs to really ensure that the integrity of the underlying zoning is being respected so that you have an opportunity for developers to enhance their development and neighbors to feel that those enhancements are consistent and compatible with their neighborhood. She asks the Council to table this and to have concrete examples brought back for consideration.

David Hunt, 113 Park Knoll Lane, encourages the Council to accept the PUD committee’s original proposal without changes that were provided by Director Taylor. Commercial density that is blended with low density residential will always be contentious situations along South 93. Densities that permit 20 units per acre with a PUD in the WB-2, and five units per acre in WLR is always going to be 12 and a half units per acre with the bordering properties WLR. Director Taylor suggests counting affordable housing as a community benefit. It may be something we can consider. Community benefit is supposed to offset additional leniencies that you have sought in terms of positioning of houses setbacks etc. It seems like something that could be pursued in certain cases.

Don Spivey, 725 Clearwater Drive, provided a letter that is appended to the packet on the website. He gave the history of how the Committee came about. The single biggest issue he has with the suggested changes from the Planning Staff is in the residential PUD where they eliminated all the underlying zones that were listed. That takes it back to ground zero negating a very significant part of what the committee worked on. The density bonus tables may be the most generous density bonuses in the Northwest. He doesn’t think anything the committee recommended did anything to negate the value of the bonuses or
negate the bonus densities that were associated with affordable housing. Open space is something that was debated extensively. From his own personal perspective if a development has lakeshores, ponds, wetlands, whatever it might happen to be, flood plains included, if things are done by the developer to make those accessible and usable by the community and by the residents of the development, it is fair to count those as open space. The affordable housing is open to revision. He requests the submission that was made to the Council in the workshop be included as his public record input.

Bob Horne, 151 Wedgewood Lane, has been a professional community planner for over 40 years, in that time he has worked in a lot of communities; he has written a lot of codes for those communities. He was a member of the PUD committee, and he was the lone dissenting voice, he does not recommend the committees draft. He sent an email Monday August 21st, which is included in the packet on the website, explaining his rationale. He prefers the staff version. The committee draft is too prescriptive. They talked about wanting predictability to protect neighborhoods, the quality, and the character. You do it through your approval criteria. You should be able to apply for a residential PUD in a residential zone, or a commercial zone. Mixed-use should be able to apply in a commercial zone. Commercial PUD in a commercial zone. Multiple underlaying zones keep the commercial in the commercial zone. If not, request a zone change. A PUD is not supposed to be a backhanded use variance. You are not supposed to be putting commercial uses in areas zoned residential. That is breaking the contract that you made with the community with approval of the zone. He suggested beta testing and they could have done beta testing if they had not spent most of the committee’s time making this draft ordinance so prescriptive. A suggestion in his email of August 21st, was to say with specific regards to paragraph D and F in section 11-2S-1, the purpose and intent section. Item D is preserve and protect the character and qualities of existing neighborhoods. Item F is providing effective buffers or transitions between potentially incompatible uses of land. He suggests some language to say ‘with specific regard for paragraphs D and F in 11-2S-1, it is the Cities preference that new development be integrated into existing neighborhoods in terms of scale, quality, character and street continuity. When in the judgement of the City such integration is not possible, practical or will not produce desired outcomes for the existing neighborhood effective buffering and transitions will be expected of the new development. That means we should be building neighborhoods and not individual development. Our first preference should be something of a similar scale, quality and character. This is telling the developer exactly the kind of development you want in your approval criteria. On the first page under Purpose and Intent, the three bullet points say what you want the PUD to be. Take ‘A through M’ and re-write them as airtight criteria and put them under approval of the Planned Unit Development. Require the developer to address every criterion including if he feels one is not applicable. The Council shall not approve any project that does not conform to these criteria. Use this to guide the quality and character of the PUD that you come out with, not the prescription of what you can. Developers like predictability just as much as the community if not more. He appreciates Director Taylor’s desire to move on but he feels this is not ready yet. He encourages a continuance.

Wendy Coyne, 1058 Meadowlark Lane, previously lived in Rivers Edge Subdivision. The PUD committee came out of what happened in the 10-acre piece of property from Highway 93 to the river. Because of the confusion around the blending and the density that was going to happen, the neighborhood had to hire an attorney. Is it smart for us to have such a high-density usage in a neighborhood when you know you are going to get fighting from it? She agrees we should step back from this. We must watch ourselves and make sure we are doing right for everybody. Allowing the multi-use of commercial and residential properties for most neighborhoods are not going to work out. So, we must look at this and think about what is going to happen long term.

Rhonda Fitzgerald, 412 Lupfer Avenue, said we are lucky to have so many knowledgeable and dedicated volunteers who are willing to take the time to really work through such a complicated process as the PUD. She thinks they did incredibly good work. There are many neighborhoods that are vulnerable
through the PUD process as proposed by the Planning Departments revisions. She thinks that this is sense that you cannot feel confident of where you live. The largest investment you will ever make in your life is daunting. She would point to the new housing needs assessment. We learned we need, over six hundred units; half of those are for rent and for lower average median in percentage of average median income; the other half of those units are single family homes. Modest homes with yards and storage close to downtown. People want to live close to downtown and that sounds to her the definition of our traditional neighborhoods. We need more of that. What she sees in the revisions tonight are exactly the opposite. A recommendation to allow commercial PUDs in the WR-3 and WR-4 residential zones by right. Those are the neighborhoods around town and as Bob Horne just said your breaking a contract with the people who live in those neighborhoods. The idea of the example of how people have a commercial zone that’s difficult to turn it into a residential development. The reverse is much more likely to come before you and that is what happens all the time. Another amendment or refinement that was proposed is to move all, not only to have allowable uses but to also make any conditional use is permitted become by right. That is the conditional use process, if you give them those conditional uses by right then where is the neighborhood? She thinks we should lower the densities that are allowed in some of those zones they are ridiculously high. The Business Service District is just not a good thing. It breeds strips for all. She thinks a lot of the community benefits should be standards. You should require connectivity to bike pedestrian paths and many other things that are considered a community benefit. She loves the idea to have a pre-submittal so neighbors could hear about what is planned before it gets very far along and everyone could discuss it and maybe there could be understanding and accommodations made. There are several projects right now that lots of people know things about but the people who live near them don’t. If you can’t make muster with the public in a preprocess then it’s not going to be very popular in the final hearing.

There being no further comment, Mayor Muhlfeld closed the public hearing and turned the matter over to the Council for their consideration.

Councilor Sweeney stated he was part of the committee and he applauds the work that was done on their draft. He agrees there are also some tweaks and things that need to be done to it. The recommended changes Director Taylor was asked to come up with square very well with what the committee was charged to do. He still doesn’t understand what “too prescriptive” means. We are about outcomes but we are also about some predictability. The charge that was given to the Committee was associated with the blending of very high-density property and very low-density property. The Committee struggled with that and came up with some pretty good ideas. It is not perfect and needs work. He does not understand that why under the old PUD, if they wanted to do certain things they are not required to go for a zone change or a growth policy change, but under the new PUD statute you would be required to in some cases. The reason we have a growth policy is that we wanted it to be observed. If we are going to do it with the PUD would it be in violation of a growth policy? He feels we need this and continue to work with Planning staff, members of the Council and members of the Committee to work through the inconsistencies or concerns that are expressed.

Councilor Feury stated we have heard we need to step back. The biggest issue that has not been addressed is the incentive for use. He doesn’t think we provided incentives or the initiative for people to use the PUD. The PUD is a valuable tool and it becomes more valuable as we are trying to infill. As Director Taylor said, we are always going to struggle with buffering against neighborhoods as we try to mitigate impact. We are trying to create a system that is going to allow the neighborhood to be happy and allow something that is a little different to happen next door. He doesn’t see where we have done that here. That is what we really need to work on. His proposes a couple members of the Committee, and a couple of members from the Council to work with staff on a final document.
Councilor Hildner stated one of the themes that keeps coming back in one way or another is that we need to not go forward with a decision this evening. There are some specifics that need to be addressed. There needs to be further consideration of some of the recommendations and suggestions that we had both in the Work Session and in the Public Hearing. This has turned into a moving target and he would agree with Councilor Feury that we need to somehow settle this. The original charge that brought us here is blending across zones rather than blending within zones. We should continue the hearing until we can decide.

Councilor Hildner made a motion, second by Councilor Frandsen to continue the discussion of WTZA 17-02 the PUD revisions through a working group made of two Council members, two of the original committee members, and Planning Staff and bring back to Council for consideration at their earliest convenience. Councilor Frandsen had a friendly amendment to continue the Public Hearing along with the discussion. Councilor Hildner agreed. The motions passed unanimously.

7) COMMUNICATIONS FROM CITY ATTORNEY
   a) Resolution No. 17-44: A Resolution indicating its intent to consider annexing approximately 43 acres of wholly surrounded land into the City of Whitefish, Montana, describing the land to be so considered, providing for notice and publication as required by law, and providing a date of hearing such proposed annexation (p.140)

City Attorney Jacobs gave her staff report provided in the packet on the website.

   b) Ordinance 17-26: Amending Title 10 Chapter 1, Building Codes of the Whitefish City Code (First Reading) (p.151)

City Attorney Jacobs gave her staff report provided in the packet on the website.

   b) Councilor Frandsen made a motion, second by Councilor Williams, to approve Ordinance 17-26: Amending Title 10 Chapter 1, Building Codes of the Whitefish City Code. The motion passed unanimously.

8) COMMUNICATIONS FROM CITY MANAGER
   a) Written report enclosed with the packet. Questions from Mayor or Council? (p.169)

      Mayor Muhlfeld asked and Manager Hammatt stated there was a good attendance for the Public Open House at the school with a lot of questions.

   b) Other items arising between May 31 and June 5th

      None
9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
   a) Consideration of cancelling the second meeting in December – December 18, 2017

       Councilor Sweeney made a motion, second by Councilor Williams, to cancel the second Council meeting in December, December 18, 2017. The motion passed unanimously.

   b) Resolution for Support for National Park System (p.171)

       Mayor Muhlfeld the Resolution for Support for National Park System that is provided in the packet on the website.

Councilor Comments:

       Councilor Hildner asked for the agenda to be printed on both sides.

       Councilor Feury he and Mayor Muhlfeld attended the event in Columbia Falls which was hosted and chaired by John Tester and was basically about the impact of open lands on our economies. One of the most interesting statistics was 75% of the job growth and 75% income growth in the State of Montana has happened in five counties, Flathead County being one of those. Of those five counties, all have the highest percentage of publicly owned land. He thinks it is a pretty good indicator that these kinds of lands are important to a lot of things particularly our economy.

       Councilor Frandsen gave big thanks to City Staff, City Law Enforcement, County Law Enforcement, School Officials and businesses throughout the Valley and all the individuals throughout the Valley for being patient through this last week as Law Enforcement dug into the threats at Columbia Falls and their resolve and to be able to hold together as a community, she thinks it is very important and thanks to all the additional Federal Agencies and assistance that we have had throughout the Valley in this case and she thinks we are fortunate to have you all be a part of this community. Thank you.

       Councilor Barberis echoed what Councilor Frandsen’s comments.

       Councilor Sweeney also echoes what Councilor Frandsen said. He would think this is a demonstration of something that he thinks we recognize here particularly in Whitefish and that this spreads now Valley wide that we are a very tight net community. Do not attack us, do not approach us, we don’t react well. We will pull together and it will not pull us apart. That is one of the things this kind of an attack on our community, our children and our way of life demonstrates. Once again, this community will not let stand. He is incredibly proud of all the work that was done, the cohesiveness with which all the agencies worked together and so he thinks it was a great thing. It is another demonstration on why we live where we live.

       Councilor Williams also echoes Councilor Frandsen’s comments and gave a sincere thank you to everyone who put in double-time through this stressful situation. Like Frank said we are a very strong close-knit community who can endure almost anything.

       Mayor Muhlfeld agrees with the previous comments. He and Director Taylor said we will comment if there is new information. Mayor Muhlfeld asked to include the Council with the new information and his recommendations. Mayor Muhlfeld, Director Workman and Manager Hammatt are meeting with the Lion Mountain Homeowners Association on Wednesday night, things are progressing nicely related to the wastewater issues that were identified in the Whitefish Lake Institutes study. Mayor
Muhlfeld asked Attorney Jacobs for a copy of the revised annexation policy. He also asked if she could send a list of services upon annexation. He will be absent from the October 2nd meeting.

10) ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)

Mayor Muhlfeld adjourned the meeting at 9:09 p.m.

______________________________
Mayor Muhlfeld

Attest:

______________________________
Michelle Howke, Whitefish City Clerk
ORDINANCE NO. 17-26

An Ordinance of the City Council of the City of Whitefish, Montana, amending Title 10, Chapter 1, Building Codes, of the Whitefish City Code.

WHEREAS, § 50-60-301(1)(b), MCA, authorizes a municipality to adopt a building code by administrative action; and

WHEREAS, in 2002, the City Council passed Ordinance No. 02-04, codified at Section 10-1-1 of the Whitefish City Code, which provides that the City Manager shall adopt the current editions of the building codes by administrative order; and

WHEREAS, when Ordinance No. 02-04 was passed, other subsections of Title 10, Chapter 1 which adopted various editions of the building codes, were not repealed; and

WHEREAS, § 50-30-301(2)(a), MCA, provides that a municipality may only adopt building codes adopted by the Montana Department of Labor and Industry; and

WHEREAS, the Montana Department of Labor and Industry has not adopted, or has ceased adopting, several of the building codes that the City adopted in subsections of Title 10, Chapter 1; and

WHEREAS, citizens and businesses have expressed confusion regarding which building codes and which editions of building codes they are required to follow.

NOW, THEREFORE, be it ordained by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: Amendments to Whitefish City Code Title 10, amending language as provided in the attached Exhibit "A," with insertions shown in red and underlined, and deletions shown in red with strikethrough are hereby adopted.

Section 3: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 4: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

ATTEST:

John M. Muhlfeld, Mayor

Michelle Howke, City Clerk
EXHIBIT "A"
Whitefish City Code Title 10 – Building Regulations
Chapter 10 – Building Codes

10-1-1: ADOPTION OF TECHNICAL CODES AND ADMINISTRATIVE REGULATIONS:

A. Adoption Procedures: The current and future editions of the building, electrical, plumbing and mechanical codes, model technical building construction codes and all accompanying appendices, amendments and modifications adopted or required to be adopted by the building codes bureau, Montana Department of Labor and Industry (or its successor), as set out in the Administrative Rules of Montana, as amended from time to time by the building codes bureau, shall be adopted by reference by administrative order of the city manager, as authorized by Montana Code 50-60-301(1)(b), except for any exceptions noted in this section or any regulations not applicable to local government jurisdictions. Except as otherwise stated herein, these codes are applicable to all buildings within the building code enforcement area of the city including, but not limited to, residential buildings containing less than five (5) dwelling units or their attached structures, any farm or ranch building and any private garage or private storage structure used only for the owner’s own use as provided by Montana Code 50-6-102(1)(a). Until such codes are adopted by administrative order, those codes currently in effect shall remain in effect. Upon adoption of new codes by administrative order, the predecessor codes shall automatically be repealed.

1. Building Code: The adopted building codes shall regulate the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all buildings and/or structures in the city and its extended jurisdictional area; provided for issuance of permits and collection of fees and penalties.

2. Mechanical Code: The adopted mechanical code shall regulate and control the design, construction, installation, quality of materials, erection, alteration, repair, location, relocation, replacement, addition to and maintenance or use of heating, ventilating, cooling, refrigeration systems, incinerators and other miscellaneous heat producing appliances within the city and its extended jurisdictional area; providing for issuance of permits and collection of fees and penalties.

3. Plumbing Code: The adopted plumbing code shall regulate and control the design, construction, installation, quality of materials, erection, alteration, repair, location, relocation, replacement, addition to, operation and maintenance or use of any plumbing system within the city and its extended jurisdictional area; providing for issuance of permits and collection of fees; and penalties.

4. Electrical Code: The electrical code, when adopted by administrative order, shall regulate and control the design, construction, installation, quality of materials, erection, alteration, repair, location, relocation, replacement, addition to, operation and maintenance...
or use of any electrical system within the city; providing for issuance of permits and collection of fees; and penalties

B. Copies On File: One copy of each code shall be on file in the office of the city clerk. To the extent the city varies from the codes referenced in subsection A of this section, any such changes are on file with the city clerk.

C. Future Amendments: The city manager shall issue an administrative order adopting any codes or amendments adopted by the Building Codes Bureau which apply to local government jurisdictions, including the adoption of the latest editions of the model technical codes or applicable administrative rules of Montana, shall become effective in the city upon order of the city manager within thirty (30) days after the date that the Bureau notifies the city of said amendments.

10-1-2: INTERNATIONAL BUILDING AND RESIDENTIAL CODES:

A. Codes Adopted: There are hereby adopted the 2000 editions of the international building code (IBC) and the international residential code (IRC) in the forms identical to that adopted by the Montana department of labor and industry. A copy of the notice of adoption issued by the department of labor and industry, and identifying by reference to the administrative rules of Montana the new codes that are adopted, is attached to administrative order dated January 16, 2003, as exhibit A and incorporated herein by reference. The IBC and the IRC, as adopted herein, shall be effective as of one minute after twelve o'clock (12:01) A.M. on December 27, 2002. One copy of the IBC and one copy of the IRC, together with exhibit A, attached to said administrative order, shall be on file in the office of the city clerk of the city of Whitefish at all times.

B. Amendments To Codes: To the extent the city varies from the codes referenced in subsection A of this section, any such changes are on file with the city clerk.
(Administrative order, 1-16-2003)

10-1-3: UNIFORM CODE FOR BUILDING CONSERVATION: There is hereby adopted by the city council for the purpose of encouraging the continued use or reuse of legally existing buildings and structures and establishing rules and regulations for the additions, alterations and repairs to the same within the jurisdictional area of the city, including permits and collections and fees therefor and appeals, that certain building conservation code known as the uniform code for building conservation, 1997 edition, adopted and published by the International Conference of Building Officials, together with all subsequent amendments and additions thereto as made and approved or modified by the building codes bureau, state of Montana, save and except such portion as may be hereafter deleted, modified, or amended by said building codes bureau, of which not less than one copy has been and now is filed in the office of the city clerk and the same is hereby adopted and incorporated as fully as if set out at length herein, and from the effective date hereof, the provisions thereof shall be controlling in the additions, alterations and repairs of legally existing buildings and structures within the jurisdictional area of the city.

10-1-4: UNIFORM PLUMBING CODE:
A. Code Adopted: There is hereby adopted by the city council for the purpose of establishing minimum standards for the construction, installation and repair of sewages and plumbing, including permits, licenses, bonds, fees, penalties and appeals, within the jurisdictional area of the city, that certain plumbing code known as the uniform plumbing code, 1997 edition, published by the International Conference of Building Officials, together with the following appendix chapters and amendments thereto, and together with all subsequent additions and amendments as may be made and approved or modified by the building codes bureau, state of Montana, save and except such portions as hereinafter deleted, modified or amended by said building codes bureau, of which not less than one copy has been and now is filed in the office of the city clerk. If city standards are more stringent, city standards shall prevail.

B. Amendments: The following appendix chapters and amendments are hereby made a part of the uniform plumbing code adopted in subsection A of this section:

1. Appendix A, recommended rules for sizing and the water supply system is adopted.

2. Appendix B, explanatory notes on combination waste and vent systems is adopted.

3. Appendix C, additional referenced standards is adopted.

4. Appendix D, sizing stormwater drainage systems is adopted.

5. Appendix H, recommended procedures for design, construction and installation of commercial kitchen grease interceptors is adopted.

6. Subsection 103.1.3, is amended with the addition of the following language: "This section shall not be construed to require a plumber license as a prerequisite for obtaining a plumbing permit. The requirements, for who must be licensed to perform plumbing work is regulated by Montana code title 37, chapter 69. The issuance of a plumbing permit does not in any way address the need for licensure by the plumbing permit holder."

7. Subsections 102.3, 103.1, 103.2, 103.3, 103.4, 103.5 and 103.6 will be left as is for use by local governments (i.e., municipalities and counties) but will not be used by the division and the state of Montana. For the purposes of enforcement by the division, these subsections are replaced with provisions of Montana code title 50, chapter 60, part 5.

   a. No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.

   b. No permit is required where the installation is exempt under the provisions of Montana code 50-60-503 or 50-60-506.
e. The requirements for permits do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of these rules.

d. Factory-built buildings covered by an insignia issued by the division need not have a plumbing permit for the construction of the unit; however, a permit will still be required for on-site work, as provided for in these rules.

8. Section 218, definition of plumbing system, is amended to read: "Includes all potable water supply and distribution pipes, all plumbing fixtures and traps, all drainage and vent pipes, plumbing fixtures and traps, drainage and vent pipes and building drains, including their respective joints and connections, devices, receptacles and appurtenances within the property line of any premises, up to twenty feet (20') beyond the building foundation line, and includes potable water piping, water heaters and vents for the premises."

9. Table 4-1, minimum plumbing facilities is deleted and replaced with ARM 8.70.303, minimum required plumbing fixtures, a copy of which is set forth below at item number 30.

10. Delete subsection 603.3.2.

11. Subsection 603.4.4.1, is amended with the addition of the following language: "Heat exchangers, in single-family dwellings on their own private well, which utilize a nontoxic transfer fluid, may be of single wall construction." 2

12. Subsection 603.4.11, is amended with the addition of the following language: "Boiler feed lines, in single-family dwellings on their own private well, may be protected with a dual-check valve with intermediate atmospheric vent when a nontoxic transfer fluid is utilized in the boiler."

13. Subsection 604.1, materials, is amended to read as follows:

a. Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel or other approved materials.

b. Cast iron fittings used for water need not be galvanized if over two inches (2") (51mm) in size.

c. Asbestos cement, PB, CPVC, PE, PEX, PEX-AL-PEX or PVC-water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building. These approved outside cold water piping materials except for asbestos cement may extend to a point within the foundation perimeter of the building provided that the piping is buried a minimum of twelve inches (12") the piping is contained within a protective sleeve where it passes through concrete construction and the piping does not
extend for more than twenty-four inches (24") out of the ground at such point where it connects to approved interior cold-water piping material.

d. PB, CPVC, PEX or PEX-AL-PEX water pipe and tubing may be used for hot and cold-water distribution systems within a building.

e. All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the administrative authority.

14. Subsection 604.2, the exception is amended to read as follows: "Exception: Type M copper tubing may be used for water piping when piping is above ground in, or on, a building."

15. Subsection 610.8, second paragraph, is amended to read as follows: "No building supply pipe shall be less than three quarter inch (3/4") (19.1mm) in inside diameter."

16. Subsection 701.1.4, is amended to read as follows: "Copper tube for underground drainage and vent piping shall have a weight of not less than that of copper tube type L."

17. Subsection 707.4, first paragraph, is amended to read as follows: "Each horizontal drainage pipe shall be provided with a cleanout at its upper terminal and each run of piping, which is more than fifty feet (50') in total developed length, shall be provided with a cleanout for each fifty feet (50'), or fraction thereof, in length of such piping."

18. Section 708.0, grade of horizontal drainage piping, is amended to read as follows: "Horizontal drainage piping shall be run in practical alignment and a uniform slope of not less than one-quarter of an inch (1/4") per foot or two percent (2%) toward the point of disposal provided that, where it is impractical due to the depth of the street sewer or to the structural features or to the arrangement of any building or structure to obtain a slope of one-quarter of an inch (1/4") per foot or two percent (2%), any such pipe or piping two inches (2") or larger in diameter may have a slope of not less than one-eighth of an inch (1/8") per foot or one percent (1%)."

19. Subsection 710.1, is amended to read as follows: "Drainage piping serving fixtures which have flood level rims located below the elevation of the next upstream manhole cover of the public or private sewer serving such drainage piping may be protected from the backflow of sewage by installing an approved type backwater valve. Fixtures above such elevations shall not discharge through the backwater valve."

20. Subsection 718.1, the exception is amended to read as follows: "Exception: Where it is impractical, due to the depth of the street sewer or to the structural features or to the arrangement of any building or structure, to obtain a slope of one-quarter of an inch (1/4") per foot, any pipe or piping three inches (3") or larger in diameter may have a slope of one-eighth of an inch (1/8") per foot and any such pipe or piping eight inches (8") in diameter or larger may have a slope of one-sixteenth of an inch (1/16") per foot."
21. — Subsection 906.1, is amended to read as follows: "Each vent pipe or stack shall extend through its flashing and shall terminate vertically not less than twelve inches (12") above the roof nor less than one foot from any vertical surface."

22. — Subsection 906.3, is amended to read as follows: "Vent pipes shall be extended separately or combined, of full required size, not less than twelve inches (12") above the roof or fire wall."

23. — Subsection 906.7, is amended to read as follows: "Frost and snow closure: Where frost or snow closure is likely to occur in locations having a minimum design temperature below zero degrees Fahrenheit (0°F) vent terminals shall be a minimum of three inches (3") in diameter, but in no event smaller than the required vent pipe. The change in diameter shall be made inside the building at least one foot (1') below the roof and terminate not less than twelve inches (12") above the roof, or as required by the administrative authority."

24. — Section 908.0, is amended to read as follows: "Wet-venting."

25. — Subsection 908.1, is amended to read as follows:

   a. — Wet venting is limited to drainage piping receiving the discharge from the trap arm of one and two (2) fixture unit fixtures that also serves as a vent for not to exceed four (4) fixtures.

   b. — All wet vented fixtures shall be within the same story; provided, further, that fixtures with a continuous vent discharging into a wet vent shall be within the same story as the wet vented fixtures.

26. — Subsection 908.2, is amended to read as follows: "The piping between any two (2) consecutive inlet levels shall be considered a wet vented section. Each wet vented section shall be a minimum of one pipe size larger than the required minimum waste pipe size of the upper fixture or shall be one pipe size larger than the required minimum pipe size for the sum of the fixture units served by such wet vented section, whichever is larger, but in no case less than two inches (2")."

27. — Chapter 12, fuel piping, is deleted.

28. — Chapter 13, medical gas systems, is deleted.

29. — The following table will be used to determine the minimum number of plumbing fixtures to be installed in new buildings:
### MINIMUM NUMBER OF PLUMBING FACILITIES\(^a, n, q\)

Fixtures (Number of fixtures per number of occupants)

<table>
<thead>
<tr>
<th>Occupancy</th>
<th>Water Closets (Unins - see footnotes g &amp; m)</th>
<th>Lavatories</th>
<th>Bathubs/Showers</th>
<th>Drinking Fountains(^c)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theaters</td>
<td>1 per 125</td>
<td>1 per 65</td>
<td>USE</td>
<td></td>
</tr>
<tr>
<td>Nightclubs(^d, e, f)</td>
<td>1 per 40</td>
<td>1 per 40</td>
<td>SECTION</td>
<td></td>
</tr>
<tr>
<td>Restaurants(^g, h)</td>
<td>1 per 75</td>
<td>1 per 75</td>
<td>2902.4 UBC</td>
<td></td>
</tr>
<tr>
<td>Halls, museums, coliseums, Arenas(^i, j), stadiums, pools, etc.</td>
<td>1 per 125</td>
<td>1 per 75</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Churches(^k)</td>
<td>1 per 150</td>
<td>1 per 75</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business(^l, m)</td>
<td>1 per 25</td>
<td>1 per 25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Educational</td>
<td>SEE SECTION 2902.4 UBC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Factory and industrial</td>
<td>1 per 100</td>
<td>1 per 100</td>
<td>1 per 100</td>
<td></td>
</tr>
<tr>
<td>High hazard</td>
<td>1 per 100</td>
<td>1 per 100</td>
<td>1 per 100</td>
<td></td>
</tr>
<tr>
<td>Residential care</td>
<td>1 per 10</td>
<td>1 per 10</td>
<td>1 per 10</td>
<td>1 per 8</td>
</tr>
<tr>
<td>Hospitals, ambulatory nursing home patients(^t)</td>
<td>1 per room</td>
<td>1 per room</td>
<td>1 per 15</td>
<td>1 per 100</td>
</tr>
<tr>
<td>Day nurseries(^n, o), sanitariums, Nonambulatory nursing home patients, etc.(^t)</td>
<td>1 per 15</td>
<td>1 per 15</td>
<td>1 per 15</td>
<td>1 per 100</td>
</tr>
<tr>
<td>Employees, other than residential care(^t)</td>
<td>1 per 25</td>
<td>1 per 25</td>
<td>1 per 35</td>
<td>1 per 100</td>
</tr>
<tr>
<td>Visitors, other than residential care (^t)</td>
<td>1 per 75</td>
<td>1 per 75</td>
<td>1 per 100</td>
<td>1 per 100</td>
</tr>
<tr>
<td>Prisons(^t)</td>
<td>1 per cell</td>
<td>1 per cell</td>
<td>1 per 15</td>
<td>1 per 100</td>
</tr>
<tr>
<td>Asylums, reformatories, etc.(^t)</td>
<td>1 per 15</td>
<td>1 per 15</td>
<td>1 per 15</td>
<td>1 per 100</td>
</tr>
<tr>
<td>Mercantile(^t)</td>
<td>1 per 500</td>
<td>1 per 100</td>
<td>1 per 750</td>
<td>1 per 100</td>
</tr>
<tr>
<td>Hotels, motels</td>
<td>1 per guestroom</td>
<td>1 per guestroom</td>
<td>1 per guestroom</td>
<td>1 per guestroom</td>
</tr>
<tr>
<td>Lodges</td>
<td>1 per 10</td>
<td>1 per 10</td>
<td>1 per 10</td>
<td>1 per 8</td>
</tr>
<tr>
<td>Multiple family</td>
<td>1 per dwelling unit</td>
<td>1 per dwelling unit</td>
<td>1 per dwelling unit</td>
<td>1 per dwelling unit</td>
</tr>
<tr>
<td>Dormitories</td>
<td>1 per 10</td>
<td>1 per 10</td>
<td>1 per 10</td>
<td>1 per 8</td>
</tr>
<tr>
<td>One and two-family dwelling(^t)</td>
<td>1 per dwelling unit</td>
<td>1 per dwelling unit</td>
<td>1 per dwelling unit</td>
<td>1 per dwelling unit</td>
</tr>
</tbody>
</table>

**10-1-5:** **UNIFORM MECHANICAL CODE:**

**A.** Code Adopted: There is hereby adopted by the city council, within the city's jurisdictional area, for the purpose of providing minimum standards to safeguard life or limb, health, property and public welfare, that certain mechanical code known as the uniform...
mechanical code, 1997 Edition, published by the International Conference of Building Officials, together with the following appendix chapters and amendments, and together with all subsequent additions and amendments thereto as made and approved or modified by the building codes bureau, State of Montana, save and except such portions as hereinafter deleted, modified or amended by said building codes bureau, of which not less than one copy has been and now is filed in the office of the city clerk.

B. Amendments: The uniform mechanical code adopted in subsection A of this section is hereby amended as follows:

1. Section 304.5, prohibited locations, delete the second paragraph, which prohibits the installation of below grade LPG equipment, in its entirety.

2. Chapter 10, boilers/water heaters, is amended as follows:

   a. In section 1006 change the wording of the entire section to read: "The requirements of this chapter apply to the construction and installation, as required by Montana code 50-74-101, except as provided for in the ASME publications referenced and incorporated in ARM 8.70.902."

3. Delete sections 1026, 1027, 1028 and 1029 of the uniform mechanical code entirely.

4. Chapter 13, fuel gas piping, of the uniform mechanical code is amended as follows:

   a. Section 1314(5). Amend line one by deleting the wording "in a pit or basement."

   b. Section 1314.1(6). Delete.

5. Chapter 12, appendix B, hydronics, shall be adopted as part of the uniform mechanical code.


10.1.6: UNIFORM CODE FOR ABATEMENT OF DANGEROUS BUILDINGS: There is hereby adopted by the city council, within the city's jurisdictional area, for the purpose of providing a just, equitable and practicable method whereby buildings or structures from any cause endanger the life, limb, health, morals, property, safety or welfare of the general public that certain abatement code known as the uniform code for abatement of dangerous buildings, 1997 edition, published by the International Conference of Building Officials, together with additions and amendments thereto as made and approved or modified by the building codes bureau, State of Montana, save and except such portions as hereinafter deleted, modified, or amended by said building codes bureau, of which not less than one copy has been and is now filed in the office of the city clerk.
10-1-72: BUILDING ACCESSIBILITY STANDARDS: There is hereby adopted by the city council for the purpose of establishing uniform standards for the design, construction and alteration of buildings so that physically handicapped persons will have ready access to and use of them, the building accessibility rules as set forth in ARM 8.70.1504.24.301.901 through 8.70.1505.24.301.905, a copy of which is set forth below, together with all subsequent amendments and additions thereto, as well as the building accessibility rules set forth in federal law of which not less than one copy has been and now is filed in the office of the city clerk, and the same is hereby adopted and incorporated as fully as if set out at length herein.

10-1-8: UNIFORM HOUSING CODE:

A. Code Adopted: There is hereby adopted by the city council, within the jurisdictional area of the city, for the purpose of providing minimum requirements for the protection of life, limb, health, property, safety and welfare of the general public and the owners and occupants of residential buildings that certain building code known as the uniform housing code, 1997 edition, published by the International Conference of Building Officials, together with all subsequent amendments and additions thereto as made and approved or modified by the building codes bureau, state of Montana, save and except such portions as hereinafter deleted, modified, or amended by said building codes bureau, of which not less than one copy has been and now is filed in the office of the city clerk.

B. Amendments: The uniform housing code adopted in subsection A of this section is hereby amended as follows:

An amendment found at ARM 8.70.102(1)(e). At the sole discretion of the building official, minimum room heights in habitable space of less than seven feet six inches (7′6″) may be considered adequate on a case-by-case basis provided the space has been lawfully used as a residential occupancy.

10-1-9: CABO MODEL ENERGY CODE:


B. Amendments: The CABO model energy code adopted in subsection A of this section is hereby amended as follows:

1. Section 104.1 General: With each application for a building permit, and when required by the building official, plans and specifications shall be submitted. The building official may require plans and specifications be prepared by an engineer or architect licensed to practice by the state, except for owner-occupied, single-family dwelling houses. All designs submitted under the provisions of section 4 shall be prepared by an engineer or architect licensed to practice by the state.
2. Section 105.2 is deleted in its entirety when the code is used by the building codes division of the department of commerce. It remains undeleted and available for use for certified local governments using the code.

3. Section 502.1.1, is amended to read as follows: "The stated U₀, U or R value of an assembly may be increased or the stated U₀, U or R value of an assembly may be decreased provided the total heat gain or loss for the entire building does not exceed the total resulting from conformance to the values specified in Tables Nos. 502.2.1 and 502.3.1. For group R buildings regulated by section 502.2, figure no. 7 of chapter 8 may be used to determine a lower U₀ value for the roof ceiling assembly when the U₀ value of the wall does not conform to the U₀ value specified in Table No. 502.2.1.11. The following building component R values represent minimum levels of insulation to be provided in group R buildings in Montana:

<table>
<thead>
<tr>
<th>Component</th>
<th>Equivalent Path</th>
<th>Prescriptive Path</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ceiling</td>
<td>R-38</td>
<td>R-42</td>
</tr>
<tr>
<td>Walls</td>
<td>R-19</td>
<td>R-21</td>
</tr>
<tr>
<td>Floors over</td>
<td>R-19</td>
<td>R-19</td>
</tr>
<tr>
<td>unheated-space</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basement-walls</td>
<td>R-10</td>
<td>R-11</td>
</tr>
<tr>
<td>Foundation</td>
<td>R-19</td>
<td>R-19</td>
</tr>
<tr>
<td>Door</td>
<td>R-2</td>
<td>R-5</td>
</tr>
<tr>
<td>Windows</td>
<td>U-0.4</td>
<td>U-0.5</td>
</tr>
</tbody>
</table>

1 Example alternative prescriptive paths are available from the bureau.

2 Lesser R value may be allowed for log building walls.

3 Basement wall insulation below uninsulated floors, except for rim joists and perimeter cripple walls, may be delayed until such time as the basement is actually finished for occupancy.

4 U-values as defined by (d) (iii).

4. Where the energy labeling sticker is required by Montana code 50-60-803, the labeling sticker shall describe the energy efficiency components of the home. The builder or representative shall sign, date and complete the label and permanently attach it to the interior electrical panel. The energy efficiency component labeling sticker must be a permanent self-adhesive label four inches by six inches (4” x 6”) in size that includes the following information:
a. Building address, name of builder or representative, date and signature;

b. Nominal R-values for flat and vaulted ceilings, above grade walls, basement and crawlspace foundation insulation, floors over unheated spaces, slab insulation and exterior doors;

c. Overall window unit U-value. Window U-value information is the value stated on the window label from the National Fenestration Rating Council (NFRC). If a NFRC U-value is not available, the overall window unit U-value described in the default window U-factor table below may be used:

**DEFAULT WINDOW U-FACTOR TABLE**

<table>
<thead>
<tr>
<th>Window Glazing Type</th>
<th>Window Frame Type</th>
<th>Wood/ Vinyl</th>
<th>Aluminum With Thermal Break</th>
</tr>
</thead>
<tbody>
<tr>
<td>Double glazing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1/4 inch air-space</td>
<td></td>
<td>0.56</td>
<td>0.67</td>
</tr>
<tr>
<td>1/2 inch air-space</td>
<td></td>
<td>0.54</td>
<td>0.62</td>
</tr>
<tr>
<td>Double glazing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Hard-coat-low-E)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1/4 inch air-space</td>
<td></td>
<td>0.49</td>
<td>0.59</td>
</tr>
<tr>
<td>1/2 inch air-space</td>
<td></td>
<td>0.42</td>
<td>0.52</td>
</tr>
<tr>
<td>1/4 inch argon-gas</td>
<td></td>
<td>0.44</td>
<td>0.54</td>
</tr>
<tr>
<td>1/2 inch argon-gas</td>
<td></td>
<td>0.39</td>
<td>0.48</td>
</tr>
<tr>
<td>Double glazing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Soft-coat-low-E)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1/4 inch air-space</td>
<td></td>
<td>0.47</td>
<td>0.57</td>
</tr>
<tr>
<td>1/2 inch air-space</td>
<td></td>
<td>0.40</td>
<td>0.49</td>
</tr>
<tr>
<td>1/4 inch argon-gas</td>
<td></td>
<td>0.42</td>
<td>0.52</td>
</tr>
<tr>
<td>1/2 inch argon-gas</td>
<td></td>
<td>0.37</td>
<td>0.46</td>
</tr>
</tbody>
</table>

†Default window U-factor window heat transmission table 5 in chapter 27 of table lists computed values for overall coefficients. U-factors listed are from the 1993 ASHRAE Fundamentals Handbook.
d. The energy efficiency rating of the heating system. This is the annual fuel utilization efficiency (AFUE) for gas heating systems and the heating season performance factor (HSPF) for heat pumps;

e. Energy efficiency information for water heaters. This is the energy factor (EF) rating, from the manufacturer and stated on the water heater;

f. Other information may be listed as an option to describe energy efficiency features of the home not stated above.

10-1-10: NATIONAL ELECTRICAL CODE:

A. Code Adopted: There is hereby adopted the National Fire Protection Association standard NFPA 70, national electrical code, 2002 edition, together with all of the amendments, deletions, and additions currently adopted by the building codes bureau of the department of labor and industry of the state of Montana, a copy of which is attached to administrative order dated January 16, 2003, as exhibit A and incorporated herein by reference, effective as of one minute after twelve o'clock (12:01) A.M. on January 17, 2003. As adopted, the national electrical code shall regulate and control the design, construction, installation, quality of materials, erection, alteration, repair, location, relocation, replacement, addition to, operation, and maintenance or use of any electrical system within the city of Whitefish, and shall provide for the issuance of permits and collection of fees and penalties. One copy of the national electrical code, together with exhibit A, attached to said administrative order, shall be on file in the office of the city clerk of the city of Whitefish at all times.

B. Amendments To Code: To the extent the city varies from the code referenced in subsection A of this section, any such changes are on file with the city clerk. (Administrative order, 1-16-2003)

10-1-113: CONSTRUCTION FACILITIES:

A. Temporary Facilities: It shall be the duty of every owner who shall have the direct and immediate supervision or control of the construction or remodeling of any building and/or construction site within the city's building codes jurisdictional area to provide toilets in or convenient to such building and/or construction site and maintain the same for the convenience of all the employees being employed on or at such building and/or construction site. Where a facility is not available, temporary toilets shall be provided.

B. Enforcement: It is hereby made the duty of the building official, his deputy, or other authorities in the city, through the city attorney, in case of failure of such owner to promptly comply with this section, to take the necessary steps to enforce the provisions of this section.

C. Penalty: Any person violating any of the provisions of this section shall be guilty of a misdemeanor and fined as provided in the general penalty in section 1-4-1 of this code for each offense. Such person shall also be deemed to have committed a municipal
infraction and shall be assessed the civil penalty set forth in section 1-4-4 of this code for each offense. For each separate incident, the city shall elect to treat the violation as a misdemeanor or a municipal infraction, but not both. If a violation is repeated, the city may treat the initial violation as a misdemeanor and the repeat violation as a municipal infraction, or vice versa.

10-1-124: BUILDING PERMITS: Any owner of property who fails to obtain the appropriate building permit, and anyone performing construction services of any kind for an owner of property who fails to verify that the appropriate building permit has been obtained, will be responsible for and will be required to pay an investigation fee, of the type described in section 107.5.2 of the uniform building code, in an amount equal to the applicable building permit fee. Any person owning property that fails to obtain a building permit, and any person performing construction services of any kind for such person who fails to verify that a building permit has been obtained, shall be deemed guilty of a misdemeanor and deemed to have committed a municipal infraction, and each such person shall be guilty of a separate offense for each and every day or portion thereof during which any violation of any provision of this section is committed, continued or permitted. For each separate incident, the city shall elect to treat the violation as a misdemeanor or a municipal infraction, but not both. If a violation is repeated, the city may treat the initial violation as a misdemeanor and the repeat violation as a municipal infraction, or vice versa.

10-1-125: FIRE PREVENTION PROGRAM FEE: The city hereby establishes a fire prevention program fee, the funds from which shall be used to partially offset development related costs incurred by the Whitefish fire department. The fire prevention program fee shall be equal to twenty nine percent (29%) of the fee currently charged by the building department as the building permit fee. The fire prevention program fees shall be collected by the building department at the time that it collects the building permit fee. The building permit fee shall be reduced by an amount equal to the fire prevention program fee. The city manager is directed to enforce the collection of the fire prevention program fee upon the effective date of this section. Subsequent increases or decreases in the amount of the fire prevention program fee shall be adopted by resolution of the city council.
September 26, 2017

Mayor and City Council  
City of Whitefish  
PO Box 158  
Whitefish, MT  59937  

Re:  Final Plat for Phase II of High Point on 2nd (formerly known as Second Street Residences); WFP 17-05

Honorable Mayor and Councilors:

This office is in receipt of a final plat application for Phase II from High Point on 2nd llc. This is a 62-lot subdivision located on the north side of E 2nd Street in the vicinity of Cow Creek and Armory Road. The request is for Phase II (22-lots) of the High Point on 2nd preliminary plat. The property is zoned WR-1 (One-Family Residential District) and WER (Estate Residential District) with a Planned Unit Development overlay. The preliminary plat was approved by the Whitefish City Council on June 2, 2014, subject to 28 conditions of approval. Phase I final plat was approval on October 5, 2015.

The applicant is providing a Subdivision Improvements Agreement (SIA) in the amount of $88,844.00 for outstanding items still under construction. Public Works has reviewed the SIA and agrees with the figures. To approve the subdivision, the Council would also have to consent to the SIA. Following is a list of the conditions of approval and a discussion of how they have been met.

COMPLIANCE WITH PRELIMINARY PLAT CONDITIONS OF APPROVAL:

Condition 1. The subdivision shall comply with Title 12 (Subdivision Regulations) and Title 11 (Zoning Regulations) and all other applicable requirements of the Whitefish City Code, except as amended by these conditions.

- Condition met. The final plat conforms to applicable City Codes and the approval granted by the City Council.

Condition 2. Except as amended by these conditions, the development of the subdivision and planned unit development shall be in substantial conformance with the approved preliminary plat, site plan and elevations that govern the general location of lots, roadways, parking, landscaping and improvements and labeled as "approved plans" by the City Council.
Condition met. The final plat conforms to applicable City Codes and the approval granted by the City Council.

**Condition 3.** Prior to any pre-construction meeting, construction, excavation, grading or other terrain disturbance, plans for all on and off site infrastructure shall be submitted to and approved by the Whitefish Public Works Department. The improvements (water, sewer, roads, street lights, trails, sidewalks, driveways, etc.) within the development shall be designed and constructed by a licensed engineer and in accordance with the City of Whitefish's design and construction standards. The Public Works Director shall approve the design prior to construction. Plans for grading, drainage, utilities, streets, sidewalks and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement designs shall be accepted by Public Works. (City Engineering Standards, 2009)

Condition met. See letter from Public Works dated 12-20-16.

**Condition 4.** Approval of the preliminary plat is subject to approval of detailed design of all on and off site improvements, including drainage. Through review of detailed road and drainage plans, applicant is advised that the number, density and/or location of building lots, as well as the location and width of the road right-of-way, and widths of rights-of-way shown on the preliminary plat may change depending upon constructability of roads, pedestrian walkways, and necessary retaining walls within the right-of-way, on-site retention needs, drainage easements or other drainage facilities or appurtenances needed to serve the subject property and/or upstream properties as applicable. This plan shall include a strategy for long-term maintenance. Fill on-site shall be the minimum needed to achieve positive drainage, and the detailed drainage plan will be reviewed by the City using that criterion. (City Engineering Standards, 2009)

Condition met. See letter from Public Works dated 12-20-16.

**Condition 5.** Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the Public Works and Planning/Building Department. The plan shall include, but may not necessarily be limited to, the following:

- Dust abatement and control of fugitive dust.
- Hours of construction activity.
- Noise abatement.
- Control of erosion and siltation.
- Routing for heavy equipment, hauling, and employees.
- Construction office siting, staging areas for material and vehicles, and employee parking.
- Measures to prevent soil and construction debris from being tracked onto public roadways, including procedures to remove soil and construction debris from roadways as necessary.
- Detours of vehicular, pedestrian, and bicycle traffic as necessary.
• Notation of any street closures or need to work in public right-of-way. (City Engineering Standards, 2009)

• Condition met. See letter from Public Works dated 12-20-16.

**Condition 6.** Provide a sewer and water easement from E. 2nd Street to the north property line. In addition, the city will need maintenance easements to serve these lines. These easements shall be signed and recorded within 30-days of Council approval. (Staff Report, Finding 8).

• Condition met with Phase I.

**Condition 7.** Easement along E. 2nd Street shall be renamed utility and sidewalk easement. (Finding 4).

• Condition met. See face of plat.

**Condition 8.** A sidewalk and planter strip with street trees be installed along the frontage of E. 2nd Street from Armory Road to Wild Rose Lane; and require Cash-in-Lieu for the remainder of the sidewalk from Wild Rose Lane to the western property line to be paid at the time of final plat. In addition, two crossings shall be installed across Armory Road at locations determined by the Public Works Director. (Finding 8).

• Condition met with Phase I.

**Condition 9.** A road extension of Wild Rose Lane and Ponderosa Court shall be fully constructed to the eastern edge of the property and shall be signed 'Future Street Connection'. The final location and alignment of these roadway extensions shall be determined by the Public Works Director. (Finding 4, Subdivision Regulations, §12-4-15H)

• Condition met. The roads were constructed according to the approved plans and the 'future street' sign was installed.

**Condition 10.** Street lighting shall be required in accordance with the Whitefish Standards for Design and Construction. Street and other on-site lighting shall be dark sky compliant and meet the requirements of the City’s Outdoor Lighting ordinance. (Zoning Regulations §11-3-25; City Engineering Standards, 2009)

• Condition met. The Public Works Department approved the street lights and they are part of the SIA. Section 2.11 in the CC&Rs references the outdoor lighting requirements of the subdivision.

**Condition 11.** No fire hydrants shall be located under any overhead power lines. (Finding 1)
• Condition met, the overhead powerlines are located within Phase I.

Condition 12. Ponderosa Court shall not terminate in a cul-de-sac. Prior to final plat approval for Phase III, Ponderosa Court shall be constructed as a through road, either by connecting back to Armory Road or intersect with E. 2nd Street. The final location and alignment shall be approved by the Public Works Department. (Findings 1 and 4; additional Findings 1-3; 5-26-15 Staff Report to City Council)

• Condition met. The new road was constructed according to the approved plans. The road accesses E 2nd Street with a right-out only.

Condition 13. Garage-forward designed townhouses are not permit within this development. (Finding 8, Architectural Review Standards 6.6.3., §12-4-12I)

• Condition no longer applies as the townhouse lots in Phase I were eliminated.

Condition 14. The Fire Marshal shall approve the placement and design of all fire hydrants prior to their installation and fire access. (UFC; Subdivision Regulations §12-4-18; Engineering Standards, 2009)

• Condition met. See email from Travis Tveidt, Assistant Chief/Fire Marshal, dated 8-1-17.

Condition 15. A Certificate of Subdivision Approval be obtained from the Department of Environmental Quality and written approval by the Whitefish Public Works Department approving the storm drainage, water and sewage facilities for the subdivision. (Subdivision Regulations, Appendix C)


Condition 16. The storm water facility shall only be permitted in the outer 25% of the wetland buffer. (Finding 3, §11-3-29C(5)(h))

• Condition met in Phase I.

Condition 17. A report shall be submitted with the final buffer averaging details. This report shall indicate the overall area required, the amount being reduce and a ‘to scale’ drawing showing the minimum width of no less than 50-feet. (Staff Report, Finding 3; Zoning Regulations §11-3-29C)

• Condition met in Phase I.

Condition 18. A wetland buffer restoration plan shall be submitted to Planning and Public Works Departments for review and approval. A financial guarantee of 125% of the restoration plant materials and installation to be held for the 5-year monitoring
period and shall be held by the city. (Staff Report, Finding 3; Zoning Regulations §11-7-10E)

- Condition met in Phase I and the five year bond is still being held.

**Condition 19.** A trail, open to the public, shall be installed the entire length of the creek/wetland buffer connecting to E. 2nd Street sidewalk. The final details of the trail installation shall be submitted to the Planning Department for review and approval. (Findings 3 and 8, 11-3-29C(5)(c))

- Condition met in Phase I.

**Condition 20.** A split rail fence or some other delineation, with the exception of chain link, along the restored wetland buffer shall be installed and maintained for the life of the project. The proposed delineation shall be reviewed and approved by the Planning Department prior to its installation. (Staff Report, Finding 7)

- Condition met in Phase I.

**Condition 21.** Dedication of the 4.04 acre parkland with the exception of the storm water facility shall be approved in accordance with State Law at the time of final plat. The parkland is subject to a reservation of a twenty-foot (20') easement for City Utilities. (Finding 4)

- Condition met in Phase I.

**Condition 22.** An open space plan for each phase shall be submitted to the Planning Department for review and approval. Such plan shall include: landscaping, details on the active pocket parks, trail location and materials, outdoor lighting and plan for the open spaces behind and next to the single family lots to ensure usability, natural surveillance and delineation between private property and neighborhood open spaces. (Finding 4)

- Condition met. Open space development is part of the SIA and Letter of Credit. See plan completed by White Cloud Design.

**Condition 23.** All areas disturbed because of road and utility construction shall be reseeded as soon as practical to inhibit erosion and spread of noxious weeds. All noxious weeds, as described by Whitefish City Code, shall be removed throughout the life of the development by the recorded property owner or homeowners' association. (Subdivision Regulations §12-4-30)

- Condition met. This is part of the SIA and weed management is part of the CC&Rs.

**Condition 24.** The following notes shall be placed on the face of the plat:
- House numbers shall be located in a clearly visible location.
(Subdivision Regulations §12-4-6; Staff Report Finding 5; City Engineering Standards, 2009)

- Condition met. See note on face of plat.

**Condition 25.** A common off-street mail facility shall be provided by the developer and approved by the local post office. (Subdivision Regulations §12-4-24)

- Condition met. See letter from USPS and the cost of installation is included within the SIA.

**Condition 26.** Prior to approval of the final plat, the applicant shall produce a copy of the proposed Covenants, Conditions and Restrictions (CC&Rs) for Second Street Residences Subdivision Homeowners’ Association (HOA) providing for:
  - Long-term maintenance of the open spaces – including proper mitigation for wildland fire protection and annual maintenance;
  - Long-term weed management plan. The weed management plan shall be submitted to the Planning Department for review and approval prior to final plat; and
  - Long-term maintenance plan for drainage and storm water management facilities. (Subdivision Regulations §12-4-30; Staff Report Finding 3; City Engineering Standards, 2009)

- Condition met. See CC&Rs Article 5, Section 5.7 and the Stormwater Operation and Maintenance Plan. The CC&Rs were recorded with Phase I and include all lots.

**Condition 27.** The Second Street Residences preliminary plat and planned unit development is approved for three years from Council action. (Subdivision Regulations, §12-3-8)

- Condition met. The preliminary plat was granted on June 2, 2014 and final plat for Phase I was approved October 2015; therefore, Phase II does not expire until October 5, 2017.

**Condition 28.** Fence heights across the entire subdivision shall not exceed three-feet.

- Condition met. See CC&Rs Section 2.14 on Page 4.

Please be advised that the Council should act on this application within 30-days following receipt of this recommendation.
Sincerely,

Wendy Compton-Ring, AICP
Senior Planner

Attachments:
- 2 reproducible mylars of final plat
- Final plat application, received 8-24-17
- Letter, applicant, 8-23-17
- Subdivision Improvement Agreement with Engineers Estimate, 8-23-17
- Standby Letter of Credit, American Bank, $88,844.00, 8-23-17
- Check, Fee in Lieu of Street Trees, 9-22-17
- Letter, Whitefish Public Works Department, Karin Hilding, 12-20-16
- Email, Travis Tveidt, Assistant Chief/Fire Marshal, 8-1-17
- Letter, DEQ, EQ#15-1794, 2-16-17
- Letter, DEQ, EQ#15-1988, 6-10-15
- Letter, USPS, Scott Foster, 8-11-17
- Conditions Covenants & Restrictions, recorded 10-7-15
- Conditions Covenants & Restrictions, First Amendment, recorded 10-19-15
- Title Report, Fidelity National Title, Guarantee No. FT1585-1715288-14-17
- Consent to Plat, American Bank, Todd Olson, 8-15-17
- Treasurer's Certification, 8-15-17
- Open Space & Landscaping Plan

C/w/att: Michelle Howke, Whitefish City Clerk

C/wo/att: High Point on 2nd llc PO Box 4600 Whitefish, MT 59937
Sands Surveying, 2 Village Loop Kalispell, MT 59901
FINAL PLAT APPLICATION

Project/Subdivision Name: High Point on Second Street, Phase 2

Contact Person:
Name: Sands Surveying, Inc
Address: 2 Village Loop, Kalispell, MT 59901
Phone No.: (406) 755-6481
E-mail: eric@sandssurveying.com

Owner & Mailing Address:
High Point on 2nd, LLC
P.O. Box 4600
Whitefish, MT 59937

Date of Preliminary Plat Approval: June 16, 2014 and the final plat of Phase 1 was approved on October 5, 2015.

Type of Subdivision: Residential ___ Industrial ___ Commercial ___ PUD __ Other ___

Total Number of Lots in Subdivision 22 Lots.

Land in Project (acres) 7.712 Acres
Parkland (acres) 1.24 Open Space dedicated to the City in Phase 1.

No. of Lots by Type:
Single Family 22-Lots Townhouse Mobile Home Park
Duplex Apartment Recreational Vehicle Park
Commercial Industrial Planned Unit Development
Condominium Multi-Family

Legal Description of the Property NE1/4NW1/4 of Section 32, T31N, 21W (See Plat).

FILING FEE ATTACHED $7304.00

Minor Subdivision with approved preliminary plat $1,056 + $200/lot
Major Subdivision with approved preliminary plat $2,574 + $200/lot
Subdivisions with Waiver of Preliminary Plat $1,980 + $200/lot
Subdivision Improvements Agreement $330
Attached Not Applicable (MUST CHECK ONE)

X       ______ Health Department Certification (Original)
X       ______ Title Report (Original, not more than 90 days old)
X       ______ Tax Certification (Property taxes must be paid)
X       ______ Consent(s) to Plat (Originals and notarized)
X       ______ Subdivision Improvements Agreement (Attach collateral)
________ ______ Parkland Cash-in-Lieu (Check attached)
X       ______ Maintenance Agreement

Plats: 1 opaque OR 2 mylars
1 mylar copy 1 signed blueline
4 bluelines 4 bluelines, unsigned
11X17 Copy 11X17 Copy

**The plat must be signed by all owners of record, the surveyor and the examining land surveyor.

Attach a letter, which lists each condition of preliminary plat approval, and individually state how each condition has specifically been met. In cases where documentation is required, such as an engineer's certification, State Department of Health certification, etc., original letters shall be submitted. Blanket statements stating, for example, “all improvements are in place” are not acceptable.

A complete final plat application must be submitted no less than 60 days prior to expiration date of the preliminary plat.

When all application materials are submitted to the Planning & Building Department, and the staff finds the application is complete, the staff will submit a report to the City Council. The Council must act within 30 days of receipt of the revised preliminary plat application and staff report. Incomplete submittals will not be accepted and will not be forwarded to the Council for approval. Changes to the approved preliminary plat may necessitate reconsideration by the Planning Board.

I certify that all information submitted is true, accurate and complete. I understand that incomplete information will not be accepted and that false information will delay the application and may invalidate any approval. The signing of this application signifies approval for Planning & Building staff to be present on the property for routine monitoring and inspection during the approval and development process.

**NOTE: Please be advised that the County Clerk & Recorder and the City of Whitefish request that all subdivision final plat applications be accompanied with digital copies.

Owner(s) Signature ___________________________ Date 8/23/2017

**A digital copy of the final plat in a Drawing Interchange File (DXF) format or an AutoCAD file format, consisting of the following layers:

1. Exterior boundary of subdivision
2. Lot or park boundaries
3. Easements
4. Roads or rights-of-way
5. A tie to either an existing subdivision corner or a corner of the public land survey system
August 23, 2017

City of Whitefish Planning and Building Department
P.O. Box 158
Whitefish, MT 59937

RE: Final Plat submittal for Phase 2 of High Point on Second Street

Dear Planning Office:

This cover letter is intended to give an overview of the conditions of approval and the supporting documentation for meeting the conditions High Point on Second Street, Phase 2. The Whitefish City Council granted preliminary plat approval of the subdivision on June 16, 2014. The City Council also approved a PUD (WPUD-14-03) by Ordinance No.14-06 which allowed the subdivision design to accommodate the different zoning classification, the Cow Creek drainage, and open space areas throughout the subdivision. Condition #12 was amended by City Council on June 1, 2015 to address road extension alignment of Ponderosa Court. The City Council granted final plat approval of Phase 1 of High Point on Second Street on October 5, 2015.

Included with this packet is a Subdivision Improvements Agreement that covers the Phase 1 improvements along with a table calculating the amount of construction that remains incomplete. The SIA and Letter of Credit of $88,844.00 is 125% of the cost remaining infrastructure.

**Preliminary Plat Conditions**

**Condition #1**: The subdivision shall comply with Title 12 (Subdivision Regulations) and Title 11 (Zoning Regulations) and all other applicable requirements of the Whitefish City Code as amended by these conditions.

This condition is met. The Subdivision complies with Title 12, Title 11 and the approved PUD.

**Condition #2**: Except as amended by these conditions, the development of the subdivision and planned unit development shall be in substantial conformance with the approved preliminary plat, site plan and elevations that govern the general location of lots, roadways, parking, landscaping and improvements and labeled as “approved plans” by the City Council.
This condition is met. The plat reflects the design of the approved preliminary plat along with the road alignment approved by City Council in June of 2015.

**Condition #3:** Prior to any pre-construction meeting, construction, excavation, grading or other terrain disturbance, plans for all on and off site infrastructure shall be submitted to and approved by the Whitefish Public Works Department. The improvements (water, sewer, roads, street lights, trails, sidewalks, driveways, etc.) within the development shall be designed and constructed by a licensed engineer and in accordance with the City of Whitefish’s design and construction standards. The Public Works Director shall approve the design prior to construction. Plans for grading, drainage, utilities, streets, sidewalks and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement design shall be accepted by public works.

This condition is met. The applicant has secured approval from the Whitefish Public Works Department. (See approval Letter from Whitefish Public Works Department dated December 20, 2016).

**Condition #4:** Approval of the preliminary plat is subject to approval of detailed design of all on and off site improvements, including drainage. Through review of detailed road and drainage plans, the applicant is advised that the number, density and/or location of building lots, as well as, the location and width of the road right-of-way, and widths of right-of-way shown on the preliminary plat may change depending upon constructability of roads, pedestrian walkways, and necessary retaining walls within the right-of-way, on-site retention needs, drainage easements or other drainage facilities or appurtenances needed to serve the subject property and/or upstream properties as applicable. This plan shall include a strategy for long-term maintenance. Fill on-site shall be the minimum needed to achieve positive drainage, and the detailed drainage plan will be reviewed by the City using that criterion.

This condition is met. The applicant has secured approval from the Whitefish Public Works Department. (See approval Letter from Whitefish Public Works Department dated December 20, 2016.)

**Condition #5:** Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the Public Works and Planning/Building Departments. The plan shall include, but not necessarily be limited to, the following:

- Dust abatement and control of fugitive dust.
- Hours of construction activity.
- Noise abatement.
- Control of erosion and siltation.
- Routing for heavy equipment, hauling, and employees.
- Construction office siting, staging areas for material and vehicles, and employee parking.
- Measures to prevent soil and construction debris from being tracked onto public roadways, including procedures to remove soil and construction debris from roadways as necessary.
- Detours of vehicular, pedestrian, and bicycle traffic as necessary.
- Notation of any street closures or need to work in public right-of-way.
This condition is met. (See approval Letter from Whitefish Public Works Department dated December 20, 2016)

**Condition #6:** Provide a sewer and water easement from E 2nd Street to the North property line. In addition, the City will need maintenance easements to serve these lines. These easements shall be signed and recorded within 30-days of Council Approval.

This condition is met in Phase 1 final plat.

**Condition #7:** Easement along E 2nd Street shall be renamed utility and sidewalk easement.

This condition is met. The Easement is so named on the Final Plat.

**Condition #8:** A sidewalk and planter strip with street trees be planted along the frontage of E. 2nd Street from Armory Road to Wild Rose Lane, and require a cash-in-lieu for the remainder of sidewalk from Wild Rose Lane to the western property line to be paid at the time of final plat. In addition, two crossing shall be installed across Armory Road at locations determined by the Public Works Director.

This condition is met. The improvements were installed in Phase 1 and a check for $7852.80 to cover the cash-in-lieu of sidewalk was given to the City with the Phase 1 final plat.

**Condition #9:** A road extension of Wild Rose Lane and Ponderosa Court shall be fully constructed to the eastern edge of the property and shall be signed 'Future Street Connection'. The final location and alignment of these roadway extensions shall be determined by the Public Works Director.

This condition is met. The roads were constructed to the plans approved by the Public Works Director and the sign was installed.

**Condition #10:** Street lights shall be required in accordance with the Whitefish Standards for Design and Construction. Street and other on-site lighting shall be dark sky compliant and meet the requirements of the City's Outdoor Lighting Ordinance.

This condition is met. Street Lights are included in the SIA. The design and type of lighting is approved by the Public Works Department.

**Condition #11:** No fire hydrants shall be located under any overhead power lines

This condition is met. Whitefish Fire approved the hydrant location. The Overhead Power Line in question is located in Phase 1 and was addressed at that time.

**Condition #12:** Ponderosa Court shall not terminate in a cul-de-sac. Prior to final plat approval for Phase III, Ponderosa Court shall be constructed as a through road to
East Second Street. Final location and alignment shall be approved by the Public Works Department. (Wording of this condition was amended and reflected here by the City Council at the June 1, 2015.)

This condition is met. The new road was constructed to the plans approved by Council and the Public Works Department.

Condition #13: Garage forward designed townhouses are not permitted within this development.

This condition is met. The townhouse lots have been removed from the Phase 1 plat and replaced with four single family lots. This condition was not applicable to Phase 2 as no townhome were proposed in this phase.

Condition #14: The Fire Marshall shall approve the placement and design of all fire hydrants prior to their installation and fire access.

This condition is met. See email correspondence from the Fire Marshall dated 8/1/17.

Condition #15: That a Certificate of Subdivision Approval be obtained from the Department of Environmental Quality and written approval by the Whitefish Public Works Department approving the stormwater drainage, water and sewerage treatment facilities for the subdivision.

This condition is met. (See MDEQ letters EQ#15-1988 dated 6/10/15 and EQ#15-1794, dated 2/16/17)

Condition #16: The stormwater facility shall only be permitted in the outer 25% of the wetland buffer.

This condition is met. This was addressed in Phase 1.

Condition #17: A report shall be submitted with the final buffer averaging details. This report shall indicate the overall area required, the amount being reduced and a “to scale” drawing showing the minimum width of no less than 50-feet.

This condition is met. This was addressed and approved with the Phase 1 final plat.

Condition #18: The final wetland buffer restoration plan shall be submitted to the Planning and Public Works Departments for review and approval. A financial guarantee of 125% of the restoration plant materials and installation to be held for the 5-year monitoring period and shall be held by the City.

This condition is met. This was addressed and approved, along with financial guarantee, in 2015 with the final plat of Phase 1.
Condition #19: A trail open to the public, shall be installed the entire length of the creek/wetland buffer connecting to E 2nd Street sidewalk. The final details of the installation shall be submitted to the Planning Department for review and approval.

This condition is met. The trail was completed with Phase 1.

Condition #20: A split rail fence or some other delineation, with the exception of chain link, along the restored wetland buffer shall be installed and maintained for the life of the project. The proposed delineation shall be reviewed and approved by the Planning Department prior to installation.

This condition is met. This condition was addressed in Phase 1

Condition #21: Dedication of 4.04 acre parkland with the exception of the stormwater facility shall be shall be approved in accordance with State Law at the time of final plat. The parkland is subject to a reservation of a twenty-foot (20') easement for City Utilities.

This condition is met. The parkland is dedicated to the City of Whitefish in Phase 1.

Condition #22: An open space plan for each phase shall be submitted to the Planning Department for the review and approval. Such plan shall include: landscaping, details on the active pocket parks, trail location and materials, outdoor lighting and plan for the open spaces behind and next to the single family lots to ensure usability, natural surveillance and delineation between private property and neighborhood open spaces.

This condition is met. See plan prepared by Whitecloud Design.

Condition #23: All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and spread of noxious weeds. All noxious weeds, as described by the Whitefish City Code, shall be removed throughout the life of the development by the recorded property owner or homeowners' association.

This condition is met. Reseeding is included in the SIA. Weed management is included in the CC&R's (Article IV, Section 4.3).

Condition #24: The following note shall be placed on the face of the plat:

- House numbers shall be located in a clearly visible location.

This condition is met. The note appears on the face of the plat.

Condition #25: That common off-street mail facility shall be provided by the developer and approved by the local post office.

This condition is met. See Letter from the Whitefish Post Master. The cost of placing the mailbox structure is included in the SIA (Item 49)
Condition #26: Prior to approval of the final plat, the applicant shall produce a copy of the proposed CC&R’s for High Point on Second Street Subdivision Homeowners Association (HOA) providing for:

- Long-term maintenance of the open spaces;
- Long-term weed management plan. Weed management plan shall be submitted to the Planning Department for review and approval prior to final plat; and
- Long-term maintenance plan for drainage and stormwater management facilities.

This condition is met. See enclosed CC&R’s: Article V (Open space maintenance); Section 5.2 (Weed Management); and Section 5.7 (Stormwater facilities maintenance); and Exhibit A. The CC&R’s were recorded with Phase 1 and include all 58 lots of the subdivision.

Condition #27: The Second Street Residences preliminary plat and planned unit development is approved for three years from the Council action.

This condition is met and the Subdivision is now called High Point on Second Street. Final Plat of Phase 1 was granted on October 5, 2015 and therefore the preliminary plat does not expire until October 5, 2017 (12-3-8(B) Whitefish Subdivision Regulations).

Condition#28: Fence heights across the subdivision shall not exceed three feet.

This condition is met. The restriction is included in the CC&R’s (Section 2.14).

A title report and consent to plats are included with this application. Taxes are paid in full. Should you have any questions regarding this final plat application, please contact me at 755-6481.

Sincerely,

Eric H. Mulcahy, AICP
Sands Surveying Inc.
Attachments:

Final Plat Application (8/23/17)
Final Plat Application Fee: $7,304.00
Subdivision Improvements Agreement (8/23/17)
Letter of Credit-American Bank for $88,844.00
Letter – Whitefish Public Works Department (12/20/16)
Email – Whitefish Fire Marshall (8/1/17)
MDEQ letters EQ#15-1988 dated 6/10/15 and EQ# 15-1794, dated 2/16/17
Letter – USPS (8/11/17)
CC&R’s High Point on Second Street Subdivision and Amendments (recorded 201500023596 & 201500024565)
Title Report – Fidelity National Title: Guarantee No. FT1585-171528; (8/9/17)
Consent to Plat – American Bank (8/15/17)
Tax Certification 8/15/17)
SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 28 day of August, 2017, by and between (High Point on 2nd, LLC), hereinafter called the Subdivider, and the City of Whitefish, State of Montana:

WHEREAS, subdivisions are subject to the provisions of Title 76, Chapter 3, Parts 1 through 6, M.C.A., said provisions being known as the "Montana Subdivision and Platting Act," hereinafter referred to as the Act; and,

WHEREAS, the Act requires that Governing Bodies adopt and provide for the enforcement of Subdivision Regulations; and,

WHEREAS, the Governing Body of Whitefish, being the Whitefish City Council, has adopted a body of ordinances entitled "Whitefish Subdivision Regulations" hereinafter referred to as the Regulations; and,

WHEREAS, the regulations provide that:

A. One of the conditions which must precede approval of the final plat of a subdivision by the Governing Body is an approved guarantee of completion of public improvements which are described and provided for in the subdivision plat.

B. The Regulations authorize various alternative methods of effecting the necessary and prerequisite guarantees and one such method is a written agreement between the Subdivider and the Governing Body; and,

WHEREAS, it is the intent and purpose of both Subdivider and Whitefish City Council to hereby enter into an agreement which will guarantee the full and satisfactory completion of all public improvements within the subdivision hereinafter described and by this agreement to satisfy the public improvement guarantee conditions for final plat approval.

THEREFORE, it is covenanted and agreed as follows:

This agreement pertains to and includes that proposed subdivision which is designated and identified as the High Point on Second Street, Phase 2 Subdivision.

This agreement specifically includes those improvements described on Exhibit "A" attached hereto and incorporated herein by reference, their projected construction completion date and estimated construction costs. All such improvements shall be done in a workman-like manner and shall be completed by August 20, 2019, a date at least sixty (60) days prior to the expiration of the collateral held by the City of Whitefish. Exhibit A includes a certification by an engineer licensed in the state of Montana to the effect that it represents a comprehensive and detailed list of all incomplete items and their actual cost, and that all information contained on it is true and accurate.
As a guarantee of performance to install the above designed improvements, the Subdivider hereby and concurrently with the subscription and execution of this agreement and the City’s Subdivision Regulations which require that a subdivider shall provide a financial security of 125% of the estimated total cost of construction of said improvements, provides the City of Whitefish, Montana with a guarantee in collateral in the amount of $88,844.00.

The Subdivider does hereby confirm that said guarantee is from a bank or other reputable institution or individual and acceptable to the Whitefish City Council. This guarantee shall be deposited with the City of Whitefish and certify to the following:

A. That the creditor guarantees funds in an amount equal to the cost, as estimated by the Subdividers, and approved by the governing body, of completing the required improvements.

B. That if the Subdividers fail to complete the specified improvements within the required time period, the creditor will pay to the City of Whitefish immediately, and without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit given in the letter.

C. That this letter of credit may not be withdrawn, or reduced in any amount, until released by the City of Whitefish, Montana.

Performance by the Subdivider of the covenants set out in this agreement and in conformance with the time schedule set forth in this agreement is the essence; accordingly, the Subdivider expressly understands and agrees that failure to meet the time schedule to the specifications described herein shall be deemed to be a breach to this agreement. The Subdivider hereby waives any notice of breach.

Upon any breach of this agreement as herein defined, the Subdivider shall be subject to the penalties and enforcement outlined in the Regulations.

In consideration of the covenants and acts of the Subdivider, the Whitefish City Council does hereby agree that the public improvement guarantee provision has been satisfied for the Subdivision, which is the subject of this agreement, provided that nothing herein shall be construed to be final plat approval or assurance of final plat approval.

This agreement shall inure to the benefit of and be binding upon any successors in interest, heirs, or assignees.

IN WITNESS WHEREOF, the parties to this agreement have executed the same on the day and year first above written:
On this 23rd day of August, 2017, before me, a Notary Public for the State of Montana, personally appeared ( ), known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

Notary Public for the State of Montana

(My commission expires _______)

This agreement is hereby approved and accepted by the City Council, City of Whitefish, Montana, this _____________ day of ________________, 20__.

____________________
MAYOR,
City of Whitefish, Montana

ATTEST:

____________________
CITY CLERK, Whitefish, Montana
(Seal)
### MISCELLANEOUS COSTS

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<tr>
<th>Item No.</th>
<th>Description</th>
<th>Unit Measure</th>
<th>Estimated Quantity</th>
<th>Unit Price</th>
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**SUBTOTAL:** $8,332.00

**Completed To Date:** 08/21/2017

**Total Estimated Cost of Construction:** $937,657.20

**Total Construction Completed to Date:** $897,482.00
SERVICE COSTS, FEES, ENGINEERING

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**TOTAL PROJECT AMOUNT**

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<tr>
<td>AMOUNT OF REMAINING WORK PRIOR TO BONDING</td>
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<td>AMOUNT OF BOND (125% OF REMAINING WORK)</td>
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AS PROJECT ENGINEER FOR THE HIGH POINT ON SECOND STREET SUBDIVISION, PHASE 2, I CERTIFY THAT THE WORK LISTED HEREIN IS CORRECT. IN ADDITION, I CERTIFY THAT THE ASSOCIATED COSTS ARE REASONABLY ACCURATE ESTIMATES OF THE RESPECTIVE COSTS OF THE WORK. THE VALUE OF CONSTRUCTION AND OTHER WORK COMPLETED TO DATE IS ESTIMATED TO BE: $969,642.00.

THE TOTAL VALUE OF REMAINING WORK, SERVICES AND FEES IS ESTIMATED TO BE: $71,075.20.

SECURITY HELD AT 125% OF THE REMAINING COSTS SHOULD BE IN THE AMOUNT OF: $88,844.00.

ALL IMPROVEMENTS SHALL BE COMPLETED BY: 8/20/2019.

BRENT FOLEY, P.E.
WGM GROUP

BRENT FOLEY
No. 49474 PE
PROFESSIONAL ENGINEER

City Council Packet October 2, 2017   Page 59 of 446
AMERICAN BANK

Irrevocable Standby Letter of Credit

Date of issue: August 23, 2017
Letter of Credit Number: 17-005

Place of Issue:

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<tr>
<th>☐ BOZEMAN WEST</th>
<th>☐ LIVINGSTON</th>
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<tr>
<td>1632 West Main Street</td>
<td>120 North 2nd Street</td>
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<tr>
<td>P.O. Box 1970</td>
<td>P.O. Box 2250</td>
</tr>
<tr>
<td>Bozeman, MT 59771-1970</td>
<td>Livingston, MT 59047-2250</td>
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<tr>
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<tr>
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<tr>
<th>☐ BIG SKY</th>
<th>☐ BOZEMAN EAST</th>
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<td>1700 Big Sky Road</td>
<td>501 East Main Street</td>
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<tr>
<td>P.O. Box 161250</td>
<td>P.O. Box 1970</td>
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<tr>
<td>Big Sky, MT 59716-1250</td>
<td>Bozeman, MT 59771-1970</td>
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Beneficiary: City of Whitefish
PO Box 158
418 E. Second Street
Whitefish, MT 59937

Amount: $88,844.00

Expiration: October 19, 2019

We hereby issue this Irrevocable Standby Letter of Credit which is available by your draft or drafts drawn on us at sight bearing the clause: "Drawn under Irrevocable Standby Letter of Credit No. 17-005 dated August 23, 2017."

Accompanied by the following documents or statements:
A Sight Draft with the following verbiage: "The undersigned hereby certifies that he/she is duly authorized to execute this document on behalf of the City of Whitefish and the amount of the draft accompanying this certification is due and owing to the City of Whitefish by virtue of default by High Point on Second Street, has failed in completing the improvements for the High Point on Second Street, Phases 2 Subdivision Per. Subdivision Improvement Agreement dated August 23, 2017."

Additional Conditions: None

We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at the office above on or before the expiration date. Except so far as otherwise stated, this credit is subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, in effect as of the date hereof.

Authorized Signature: [Signature]

Todd Oson, Vice President/Branch Manager
PAY TO THE ORDER OF City of Whitefish

Eleven Thousand Three Hundred Forty and 00/100*

American Bank Check

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<th>Type</th>
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December 20, 2016

Brent Foley
48 North P.C.
151 Business Center Loop, Suite A
Kalispell, Montana 59901

RE: Second Street Residences Phase 3 Plans and Specifications

Dear Brent:

This letter is in regards to the Second Street Residences Phase 3 Plans and Specifications. Your revised plans have been reviewed and approved by the Public Works Department.

Approval is subject to the following conditions:

1. The revised Stormwater sheet 19, dated 12/13/16, must be incorporated into the final construction plan set.
2. The Homeowner's Association Stormwater Management Operation and Maintenance Responsibilities must be incorporated into the HOA Declaration of Covenants, Conditions, and Restrictions. This must include an Operation and Maintenance Manual for the Hydro International Downstream Defender.
3. A signage plan for the right-out only section of Ponderosa Court must be submitted for review and approval by the Public Works Department.

The City's water and sewer system have adequate capacity to serve this project. Approval is given with the understanding that any deviation from the approved plans and specifications will be submitted to the Public Works Department for review and approval. As a condition precedent of receiving final acceptance of infrastructure improvements, the property owner, developer, or contractor shall provide the City with a maintenance bond of ten percent of the total value of the improvements. The bond shall remain in place for a two-year period after acceptance of the City infrastructure.

Upon project completion and before final acceptance, the Professional Engineer shall submit record drawings and certify in writing that the construction meets the requirements of the approved construction documents. Any contractor working in the City right-of-way must fill out a right-of-way permit with the associated insurance and bonding requirement. Please give a call,
at 863-2450, to set up an on-site preconstruction meeting prior to the start of the project.

Sincerely,

[Signature]

Karin Hilding, P.E.
Senior Project Engineer
From: Travis Tveidt <ttveidt@cityofwhitefish.org>
Sent: Tuesday, August 1, 2017 2:42 PM
To: Brent Foley
Cc: Travis Tveidt
Subject: RE: Approval of Hydrant Locations - High Point on 2nd Phase 3

Hi Brent

I have reviewed the plans for the hydrant locations and the fire access for the High Point subdivision phase 3. I found everything to be ok with Whitefish Fire Department, consider this your approval letter for Phase 3. If you have any other questions don’t hesitate to call.

Travis Tveidt
Assistant Chief / Fire Marshal
Whitefish Fire Department
275 Flathead Avenue - PO Box 158
Whitefish, Montana 59937
406-863-2481
ttveidt@cityofwhitefish.org

From: Brent Foley [mailto:bfoley@wgmgroup.com]
Sent: Tuesday, August 1, 2017 11:59 AM
To: Travis Tveidt <ttveidt@cityofwhitefish.org>
Cc: Joe Page <jpage@cityofwhitefish.org>
Subject: Approval of Hydrant Locations - High Point on 2nd Phase 3

Hello Travis,

We are currently under construction on the 3rd phase of the High Point on 2nd Subdivision in Whitefish. I had previously worked with Tom Kennelly on the location of fire hydrants and access on this project. We are hoping to file final plat next week and as you likely know, part of the requirement is that I receive approval from the Fire Marshall for the placement of fire hydrants and fire access. I had received overall approval from Tom on all phases, however part of the road system changed within phase 3. I know he had reviewed the revised road and hydrant plan in a site review meeting, but I don’t see where I have written approval from him specific to phase 3. Could you please take a look at the attached plan sheets and provide me with an approval letter for phase 3? Thank you so much for your help and please let me know if you have any questions or need any additional information.

Thank you,
February 16, 2017

Brent Foley
WGM Group
151 Business Center Loop, Suite A
Kalispell, MT 59901

RE: Phase 3 of Second Street Residences, City of Whitefish, MT
Water and Sewer Main Extensions – Approval
EQ#15-1794

Dear Mr. Foley:

Thank you for the revised plans and specifications for the water and sanitary sewer extensions proposed to serve Phase 3 of Second Street Residences, received March 4, 2016 and February 16, 2017, under the seal of Brett W. Walcheck, PE#14872. This submittal was reviewed along with the original March 13, 2015 submittal. City approval of Phase 3 was received February 16, 2017. The project was reviewed under Circular Design Standards DEQ-1, 2014 Edition and Circular Design Standards DEQ-2, 2012 Edition.

Second Street Residences utilized the Municipal Facility Exclusion (MFE) method to satisfy the Sanitation in Subdivision Act requirements (approved under EQ#15-1988). In using the MFE process, the City of Whitefish provided the storm water review.

The water and sanitary sewer improvement plans and specifications, received February 16, 2017, proposed to serve Phase 3 of the Second Street Residences are hereby approved with the condition listed below. One copy of the plans and specifications bearing the approval stamp of the Department of Environmental Quality is enclosed. A second set will be retained as Department Record.

The entire Second Street Residences Subdivision is intended to serve 58 single-family residential lots. The Phase I and II water and sanitary sewer infrastructure were approved to serve 36 lots (Lots 1-12 and Lots 15-38). Phase 3 water and sanitary sewer infrastructure is approved to serve 22 lots (Lots 13-14 and 39-58). The design peak day water demand for the full 58 lots is estimated to be 202 gpm for domestic and irrigation. The design peak wastewater outflow is estimated at 51 gpm.

In general, the water main extension serving Phase 3 consists of: approximately 1500 feet of 8-inch diameter C-900 CL150 PVC water main, 4 fire hydrant assemblies, 6 gate valves, one connection to existing water main in East 2nd Street, and one connection to the Phase 1-II water main. The fire hydrants are capable of providing over 1000 gpm fire flow at 20 psi residual pressure.

The sanitary sewer extensions in Phase 3 consist of: installing approximately 1200 feet of 8-inch diameter SDR 35 gravity sewer main, 10 manholes and one connection to existing gravity sewer line located within East Second Street.
Approval is given with the understanding that any deviation from the approved plans and specifications will be submitted to the Department for reappraisal and approval. The project may not be placed into service until the project engineer or designer certifies by letter to the Department that the activated portion of the project was constructed in substantial accordance with the plans and specifications approved by the Department and there are no deviations from the design standards other than those previously approved by the department. Within 90 days after the completion of construction, a complete set of certified "as-built" drawings must be signed and submitted to the department.

It is further understood that construction will be completed within three years of this date. If more than three years elapse before completing construction, plans and specifications must be resubmitted and approved before construction begins. This three-year expiration period does not extend any compliance schedule requirements pursuant to a Department enforcement action against a public water or sewage system.

Department approval of this project covers only those portions of the plans and specifications that are subject to the Department’s review authority under the Public Water Supply Laws (MCA 75-6) and the Administrative Rules promulgated thereunder (ARM 17.38). This approval does not cover items found within the plans and specifications that are outside of the Department’s review authority, including but not limited to: electrical work, architecture, site grading or water and sewer service connections.

Thank you for your efforts regarding this submittal. If you have any further questions, please contact me at (406) 755-8979 or egillespie@mt.gov

Sincerely,

Emily J. Gillespie, P.E.
Public Water Supply and Subdivisions Bureau

C: High Point on 2nd, LLC, P.O. Box 5606, Whitefish, MT 59937
   Karin Hilding, Whitefish Public Works
   Wendee Jacobs, Flathead County Environmental Health
   MDEQ Plan Review File
June 10, 2015

Brett Walcheck PE
48 North PC
151 Business Center Loop Suite A
Kalispell MT 59901

RE: Second Street Residences
Municipal Facilities Exclusion
EQ#15-1988
City of Kalispell
Flathead County

Dear Mr. Walcheck

This is to certify that the information and fees received by the Department of Environmental Quality relating to this subdivision are in compliance with 76-4-127, MCA and ARM 17.36.602. Under 76-4-125(2)(d), MCA, this subdivision is not subject to review, and the plat can be filed with the county clerk and recorder.

Plans and specifications must be submitted when extensions of municipal facilities for the supply of water or disposal of sewage are proposed {76-4-111 (3), MCA}. Construction of water or sewer extensions prior to DEQ, Public Water Supply Section’s approval is prohibited, and is subject to penalty as prescribed in Title 75, Chapter 6 and Title 76, Chapter 4.

Sincerely,

Leata English
Subdivision Section
(406) 444-4224
email lenglish@mt.gov

cc: City Engineer
    County Sanitarian
    file
August 11, 2017

Brent Foley P.E.
WGM Group
151 Business Center Loop, Suite A
KalsPELL Mt 59901

Subject: Mailbox location approval Phase 3 East 2nd St
Whitefish Mt. 59937

Dear Mr. Foley;

The mailbox location you have requested for Phase 3 Highpoint Subdivision located off of 2nd st has been approved for mail delivery via CBU’s provided by the developer.

The location is indicated in the construction plat provided by WGM Group.

Sincerely,

Scott Foster
Postmaster Whitefish Mt
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
High Point on 2nd Street

THE UNDERSIGNED, High Point on 2nd, LLC, a Montana Limited Liability Company (herein known as the "Developer") of 492 East 2nd Street, Whitefish, MT 59937, hereby encumbers and restricts the real property situated in Flathead County, Montana, NE1/4NW1/4 SEC.32, T.31N., R.21W., P.M., M., FLATHEAD COUNTY, MT, known as lots 1-58 of High Point on 2nd St, LLC, according to the plat thereof recorded in the records of the Office of the Clerk and Recorder of the County of Flathead, State of Montana (the "Plat") with this Declaration of Covenants, Conditions and Restrictions of High Point on 2nd St, LLC (referred to herein as the "Declaration") as set forth below, and declares that the real property shall at all times be owned, held, used and occupied subject to the provisions contained in this Declaration and to the covenants, conditions, and restrictions contained herein from and after the date this document is recorded with the Flathead County Clerk and Recorder’s office. The property shall not be used, nor shall any activities be conducted on it in violation of this Declaration.

ARTICLE I
Purpose

Section 1.1 Purposes. The purposes of this Declaration are to ensure that High Point on 2nd St, LLC is developed for single-family residences and home pads, common areas for entrance sign, mail box site, to ensure appropriate development and improvement of each lot within the property; to ensure that all homes and improvements constructed on the lots meet certain minimum size and construction standards; to ensure the enjoyment of the wildlife amenities and the use of all recreational amenities; to protect the owners against such improper use of surrounding lots as will depreciate the value of their lot; to prevent the construction of inappropriate structures; to encourage and secure the building of attractive homes on the lots with appropriate locations; and in general to provide adequately for a high quality of improvements on the property and thereby to enhance the values of improvements made by owners so that each property owner in the Subdivision can quietly and peacefully enjoy and use their property.

ARTICLE II
Covenants

Section 2.1 Residences. No lot shall be used except for one single-family residence and approved Accessory Dwelling Unit (ADU). No building shall be erected, altered, placed or permitted to remain except for residential purposes, except with the prior approval of the Architectural Review Committee. Outbuildings shall conform in appearance with the residence and must be approved by the Architectural Review Committee, which shall have the right in its discretion, to not allow any outbuildings which, in the opinion of the Architectural Review Committee impede an adjoining property owner’s use or enjoyment of his/her property (including the view from such property), do not fit with the

High Point on 2nd – Phase 1, 2 & 3
Declaration of Covenants, Conditions and Restrictions
Page 1
character of the surrounding residences, or are otherwise unsightly. No rentals of any residence or ADU for a duration of less than 30 days shall be permitted.

Section 2.2 No Further Subdivision. No lot shall be further subdivided. A change in boundary lines between adjacent owners shall not be considered subdivision. Two or more contiguous lots may be combined to form 1 large lot; but such a combination shall not reduce the assessments or voting rights for the combined lots.

Section 2.3 Construction:
A) No structure or other improvement may be constructed on any lot until such lot has been approved by the Architectural Review Committee, all as further provided for herein. No temporary building, house trailer, mobile home, or other temporary structure shall be erected or placed upon this property during construction. All construction, including landscaping, shall be completed within 18 months from the date construction begins. After a lot is purchased, the lot owner shall be responsible for keeping it clean of all debris, prior to construction. Lot owners shall be fined $200.00 per month to cover the Developers cost to maintain the lot if lots are not maintained after purchase. All dwellings shall be constructed on the lot and no trailer homes, mobile homes, modular homes, prefabricated homes, or “Kit Type” homes of any kind shall be placed on a lot.

B) All structures shall be constructed of new materials, except that suitable used materials such as used brick or beams may be utilized, provided that advance approval has been obtained from the Architectural Review Committee. All proposed excavation, fill and grading, and erosion control plans shall be submitted to the Architectural Review Committee for prior approval to ensure that the environmental impact of the proposed lot plan is considered. The dwelling shall not be occupied until such time that exterior construction is completed and all building debris is removed.

C) If construction activity on any lot should cause damage to the roads or improvements, the cost of repairs shall be solely borne by the owner of said lot. A graveled driveway shall be constructed on each lot prior to site preparation and contractors shall use the graveled driveway for access to the lot. Parking shall be provided on-site for construction vehicles. The driveway shall be paved prior to or within 90 days of occupancy (weather permitting). The Homeowners Association or the Architectural Review Committee may adopt rules and regulations governing construction, including trash and debris removed, sanitary facilities, parking areas, restoration of damaged areas, fire protection and other construction activities. No building materials, vehicles or other items of personal property shall be stored on any lot prior to commencement of construction of the dwelling.

Section 2.4 Residences. No residence shall have more than three (3) levels. Residence must pass architectural review.

Section 2.5 Design Character. The design character should create a residence that blends with its environment instead of standing out against it. Emphasis on natural-looking materials and muted colors is essential. Use of natural rock is strongly encouraged. Rustic or Craftsman Style Homes with natural wood siding are mandatory unless otherwise approved by the Architectural Review Committee. Metal Roofs are strongly discouraged, but may be permitted by the discretion of the Architectural Review Committee if the Board deems the materials and appearance are suitable and appropriate. The
Architectural Review Committee has also prepared a set of Architectural Design Guidelines to help the homeowners of High Point on 2nd build homes that follow the nature and character of the subdivision that the Architectural Review Committee envisions. The Homeowners Association and the Architectural Review Committee shall have broad discretion in interpreting these Covenants, Conditions and Restrictions and the Architectural Design Guidelines.

Section 2.6 Setbacks. No building or structure shall be erected on lots 1 through 58, as shown on the Plat of High Point on 2nd St, LLC, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana, closer than 10 feet to either of the two side lot lines; closer than 25 feet from the front lot line; or closer than 20 feet from the rear lot line. When two or more adjacent lots are acquired as a single building site, the side lot line shall refer only to the lot lines bordering the adjoining property owners.

Section 2.7 Sight Lines. For elimination of traffic hazards and to promote traffic safety, no hedge or shrub planting which obstructs sight lines at elevations between three (3) and six (6) feet above the roadway shall be placed or be permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in case of a round property concern, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight items.

Section 2.8 Garages. There shall be a maximum three-car attached garage permitted per lot, and garage forward designs are allowed on a case-by-case basis.

Section 2.9 Maintenance. Every structure once constructed on a lot shall be kept in the same condition as at the time of its initial construction, excepting normal wear and tear. All structures shall be preserved and of pleasant appearance by maintaining paint, stain or sealer as needed. If any structure is damaged in any way, the owner shall, with due diligence rebuild, repair and restore the structure to its appearance and condition prior to the casualty. Reconstruction or repair of any structure (including any landscaping) shall be completed within nine (9) months of any casualty that damaged or destroyed any improvements or landscaping. The Architectural Review Committee must approve any changes or alterations to the structure, landscaping or lighting.

Section 2.10 Address Identification Posts. Each home is required to have an address sign, which shall be standardized by the Design Guidelines. The post shall have the address number on it. The identification post shall be located by the driveway entrance, as specified by the Design Guidelines. Lot owners are responsible to maintain this post, keeping it free from snow coverage, so it is clearly visible from the adjoining roadway at all times.

Section 2.11 Outdoor Lights. Ground level lighting of patio, deck, driveway and entryway areas on any lot that do not light areas outside such lot or create glare are permitted as provided in the Design Guidelines. No flood, spotlights or halogen lighting is permitted except as may be authorized by the Architectural Review Committee and meet the City of Whitefish’s dark sk standards. Christmas
seasonal decorative lighting may be allowed subject to such rules and restrictions as the Architectural Review Committee may have or approve.

Section 2.12 Landscaping. Lawns shall be permitted provided that they are seeded using one of the approved seed options listed on the attached Approved Plant List. An Approved Plant List of approved trees, shrubs, and grasses for landscaping purposes throughout High Point on 2nd is attached hereto as Exhibit “A” and is incorporated herein by this reference. Minimal disturbance of all existing vegetation on each lot is encouraged. All lots shall be fully landscaped, including to the paved street, which includes the boulevard land between the sidewalk and road. Landscaping of the entire lot shall occur simultaneously with the construction of other improvements on the lot. All homeowners must plant a minimum of three (3) native trees, at a minimum of ten (10) feet tall, by the completion of construction of their residence. Tree placement by homeowners shall minimize obstruction of mountain views for all residences and all tree placement shall be prior approved by the Architectural Review Committee at the time house plans are submitted to the Board. Homeowners may install ornamental shrubs, groundcover, and perennial plantings within private areas immediately adjacent to the residence. Trees planted within the building envelope shall be selected from either the “native” or “ornamental” sections of the Approved Plant List. Due to seasonal bear activity in the vicinity of High Point on 2nd, no trees or shrubs shall be fruit bearing.

Section 2.13 Landscaping On Roadway Boundary. All lots shall maintain their boulevard land between the sidewalk and the city road per Whitefish City Ordinances.

Section 2.14 Fencing. Fencing on each lot is permitted. Permitted fencing of the residence shall not exceed ten (10) feet from the front edge of the residence toward the street. No fence shall be over three (3) feet in height in the front area of the residence toward the street. Fencing in the rear is also limited to three (3) feet in height unless approved by Architectural Review Committee and City of Whitefish. All fences shall be constructed of wood; Chain Link, metal, and vinyl fencing shall not be permitted. Only cedar split rail fencing shall be permitted from the front edge of the residence toward the street. All fencing and placement of fencing on each lot must be approved by the Architectural Review Committee prior to construction.

Section 2.15 Retaining Walls. Stone retaining walls recommended. Railroad ties and plain concrete blocks or plain poured walls are not permitted. A maximum of 6’ in height is allowed, unless the Architectural Review Committee determines that an exception is warranted because of extraordinary circumstances. Areas that require walls taller than 6’ should be terraced with multiple walls.

Section 2.16 Driveways. All driveways shall be paved with asphalt or finished with concrete surfacing or pavers from the street; each driveway shall not exceed 12’ in width. No house shall have a driveway exceeding twelve (12) feet in road easement area.

Section 2.17 Vehicles. No recreational vehicles, trailers, trucks exceeding one-ton capacity, unsightly, wrecked or inoperable vehicles, boats, recreational vehicles, including four-wheelers, snowmobiles, motorcycles, or equipment shall be parked or allowed to remain upon any of the said lots. No vehicle shall be parked upon or encroach upon any Common Properties.
Section 2.18 Utilities. All utility service lines, whether for power, telephone, or otherwise, shall be installed underground to access each lot. The owner of each lot shall be solely responsible for all utility connecting costs and extending service from the underground service line to the residence. All necessary utility easements shall be provided.

Section 2.19 Easements for Utilities, and The Water System. The Developer and the Homeowner's Association shall have an easement to cross any lots contained in the High Point on 2nd St for the purpose of installing any necessary utilities and to construct the Water System, all of which shall be installed underground.

Section 2.20 Sewer System. No individual sewage disposal system shall be permitted on any lot. Each lot owner shall privately arrange for the introduction of sewer utility service with the City of Whitefish Public Works Department to his or her particular lot. All lots shall be connected to the City of Whitefish sewer system. This service shall be supplied and utilized subject to the current rules and regulations for the City of Whitefish Water and Sewer Utilities, and to any municipal resolutions and ordinances as made effective by the Whitefish City Council from time to time, all of which are incorporated herein.

Section 2.21 No Business Use. No professional business, manufacture, trade or commercial activity may be conducted on the premises. No activities of the Developer or its agents during its sales efforts shall be considered to be in violation of this Section.

Section 2.22 Signs. No signs including real estate signs shall be allowed except for developer signs and builder signs during the construction period.

Section 2.23 Fuel Tanks. No fuel tanks above or below ground are allowed.

Section 2.24 Antennas, Satellites, Clotheslines, and Poles. No antennas, large satellite dish receivers, transmitters, security alarms, clotheslines or similar devices shall be erected on any building or rooftop. Satellite dish receivers 24" in diameter or less are permitted; the dish shall be located out of view, screened by design features, fences or landscaping as approved by the Architectural Review Committee.

Section 2.25 Storage. Firewood shall be stored in a storage shed or stored out of view.

ARTICLE III
Animals, Birds, and Pets

Section 3.1 Pets Permitted. No poultry, birds (except inside pet birds, which must be kept inside a home), hogs or other livestock or animals shall be kept or raised. Notwithstanding the foregoing, cats, dogs, or other small household pets, not to exceed three (3) in total numbers, may be kept on each lot. Of the three (3) animals permitted by each lot, each lot shall not be permitted to keep more than two (2) "large" dogs. A "large" dog, for the purpose of this provision, shall be considered
any dog over 50 pounds in weight. No pet food shall be left outdoors at any time. Dogs must be leashed in the adjacent Environmental Protection Area.

Section 3.2 Pets to Remain Within Owner’s Property or within pet designated areas. All pets, except cats, are to be leashed, or otherwise confined to the premises or within pet designated areas and not allowed loose at any time outside the property owner’s own premises.

Section 3.3 Pet Noise. No property owner shall have or keep any dog, which barks or whines on a regular or continuous basis; or any other pet, which creates an ongoing disturbance for any adjoining or neighboring property owner.

Section 3.4 Living with Wildlife. Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. An Approved Living with Wildlife Covenants is attached hereto as Exhibit “B” and is incorporated herein by this reference.

ARTICLE IV
Removal of Waste, Property Appearance and Upkeep

Section 4.1 No Offensive Activity. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which is or which may become an annoyance or nuisance to the neighborhood or any adjoining property owner.

Section 4.2 Lots to be Maintained. Each owner shall be responsible to maintain all structures on such owner’s lot in a manner consistent with its original design, including painting, repair, landscaping, and removing trash and debris. No outside burning will be permitted except for outdoor barbecues. Each lot at all times shall be kept in a clean, sightly and in a wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any lot so that the same are visible from any neighboring lot or any street or any open space. All garbage left outside a residence for pick-up or delivery shall be properly contained and secured.

Section 4.3 Landscape Maintenance. All landscaping shall be maintained and shall not be allowed to become unsightly. All weeds, including any noxious weeds, shall be eradicated or controlled and all property owners shall comply fully with Montana laws regarding the control or eradication of noxious weeds. All noxious weeds must be physically removed by lot owners or anyone hired by the lot owners to prevent the spread of noxious weeds in the area. The use of pesticides or artificial fertilizers shall not be permitted for any purpose, but lot owners shall be permitted to use compost.

Section 4.4 Garbage and Refuse Disposal. No garbage, refuse, rubbish, trash or cuttings shall be deposited on any street, lot or any common area. All garbage, refuse, trash and cuttings shall be kept in approved covered containers at all times and any such covered container shall be kept within an enclosed structure except for scheduled collections to avoid attracting bears or any other animals to the area. No junk automobiles are allowed. Undeveloped lots shall be mowed at least twice each year.
ARTICLE V  
Common Properties

Section 5.1 Common Properties. Common Properties means the property, which is subject to this Declaration, but excluding the individual lots within the property. Thus, the Common Properties include any areas shown on any plat of the property within the Subdivision as easements, parks, common areas, pet area, open space or open area and other property intended for the common use, benefit and enjoyment of the owners and such other persons as may be permitted to use the Common Properties under the terms of this Declaration or any agreement with the Association. The Common Properties shall include but not be limited to utility easement areas and any common areas that are shown on the Plat of High Point on 2nd St, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana. Common Properties as used herein shall include pathways, entryways into the Subdivision, and all non-city or non-county roads, which are for the benefit of the Subdivision, whether located within or without the Subdivision. No motorized vehicles are permitted on any trails or paths except for those vehicles needed for maintenance.

Section 5.2 Maintenance of Common Properties. The Homeowners Association shall maintain the open space portions of the Common Properties as well as adopt a “Weed Management Plan” so as to provide an attractive and useful amenity for the owners and provide both a natural and manicured environment. The main roadway through the Subdivision has a sixty (60) foot road easement and the homeowners are responsible for their removing snow from the sidewalks and maintaining the landscape boulevards for their individual sections within the sixty (60) foot road easement.

Section 5.3 Fence Maintenance. From the membership dues collected each year from lot owners, the Homeowners Association shall be responsible for the maintenance and yearly upkeep of all fencing west of High Point on 2nd placed around the Environmental Protection Area. A cedar split rail fence shall be placed around the Environmental Protection Area.

Section 5.4 Easement Over All Common Properties. The owners shall have an easement for use and enjoyment of all of the Common Properties, subject to such rules and regulations as the Homeowners Association may develop from time to time, and also subject to the rights reserved to Developer and the reserved rights of any third parties with respect to the Common Properties. If the Developer adds any property to the original Subdivision, the owners of such property shall be entitled to utilize the Common Properties in the original Subdivision and the owners in the original Subdivision shall be entitled to use the Common Properties located within the added property.

Section 5.5 Retained Easement for Roads and Utilities. Developer hereby reserves and shall have an easement for access and utility purposes over all of the 60' Private Road and Utility Easement areas, all of the Water Line Easement areas, all of the Utility Easement areas, and other Common Properties, all as shown on the plat of High Point on 2nd St, Subdivision.

Section 5.6 Road Maintenance. In the event the City of Whitefish does not properly maintain the roads of the Subdivision to the standards of the Homeowners Association, the roads within the
Subdivision shall be maintained, repaired, or replaced as needed by the Homeowners Association, including plowing of snow and recoating pavement. The Homeowners Association shall not be permitted to use salt or deicer to break up ice or snow pack on the roads of the Subdivision. The roads shall be maintained in good condition to allow year-round access to all lots. During the “Period of Developer Control” no gates, other impediments, or signage may be placed on any roads without the prior written consent of Developer. The Homeowners Association may elect to landscape and/or maintain portions of the road right-of-way not actually used for road purposes. The roads within the Subdivision shall not be private roads, but shall be public roads that are open to the public.

Section 5.7 Stormwater Management Facilities and Maintenance. Storm Water Management Facilities shall mean and refer to Stormwater Improvements and drainage easements as shown on the approved engineering plans and shall include all pond facilities, detention areas, open spaces, drainage swales, Hydrodynamic Separators, catch basins, inlets, manholes, basin outlets, storm sewer service (sump pump drains) pipes, drainage structures, accesses, detention basins, retention basins (including slope stabilization and landscaping) and all other Stormwater related facilities not located within the City of Whitefish Right-of-Way, and installation heretofore or hereafter constructed, installed, maintained or operated in, under, and through the Property.

The Association shall supervise, manage, operate, examine, inspect, care for, preserve, repair, replace, restore and maintain all Storm Water Management Facilities located outside City of Whitefish Right-of-Way, all at its own cost and expense, and shall levy against each member of the Association by assessment, a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement of the Storm Water Management Facilities.

The stormwater management facilities operate as a system in the management of stormwater runoff. Their construction and effective operation was predicated on the facilities being managed/operated as a system. For the proper functioning of the Storm Water Management Facilities, it is important that no debris of any kind (dirt, yard waste, landscape clippings etc.) be disposed of on, in, or near the facilities. No dirt, yard waste, landscape clippings or any type of debris should be discarded/placed on the slopes or on any area of the ponds. No landscaping of any kind can be placed on the slopes or on any area of the ponds without the approval of the Board of Directors. Please refer to the Stormwater Management Facilities Operation and Maintenance Plan, which was created by 48 North Engineering for the Homeowners of High Point on 2nd Street and the City of Whitefish Public Works Department for any questions.

Section 5.8 Property Taxes. It is acknowledged that, for property tax purposes, Flathead County and the State of Montana may allocate to each lot a fractional, proportional portion of the value attributable to the Common Properties. By accepting a deed to a lot the owner agrees to this mechanism for property taxation and agrees to pay a proportional share (as allocated by Flathead County and the State of Montana) of the taxes attributable to the value of the Common Properties, while at the same time allowing the Homeowners Association to administer and control the Common Properties.

Section 5.9 Approval of Developer. During the “Period of Developer Control” no construction of improvements shall take place within the Common Properties nor shall any other changes or
alterations be made to the Common Properties or the uses within the Common Properties without the prior written consent of the Developer.

Section 5.10 Insurance on Common Area. The Homeowners Association shall maintain the following types of insurance: property insurance, liability and comprehensive fidelity to the extent that such insurance is reasonable and available, considering the availability, cost and risk coverage provided by such insurance, and the cost of such coverage shall be included in the budget and shall be paid by the Homeowners Association as a common expense.

ARTICLE VI
Homeowners Association

Section 6.1 Membership in the Association. The members of the Homeowners Association shall consist of the owners of each lot of the Subdivision. Each owner covenants and agrees that he/she will automatically be and will remain a member of the High Point on 2nd St. Home Owners Association (known as the “Association”) so long as the property owner retains any ownership interest in any lot located within this Subdivision. By accepting the conveyance of the property, the owner binds himself to abide by this Declaration, the Articles of Incorporation and Bylaws of the Association, and the reasonable rules and regulations of the Association, which may be adopted by the Board of Directors from time to time. Upon sale of a lot, the membership associated with that lot shall be deemed automatically transferred from the former lot owner to the purchaser of such lot. Such transfer shall not relieve the former lot owner of any obligations incurred by such former lot owner prior to the transfer. For the purposes of membership in the Association, the purchaser under any contract for deed notice of which is recorded in the real estate records of Flathead County, Montana, shall be considered the owner.

Section 6.2 Membership Dues. Membership dues for the Homeowners Association are estimated at $600.00 per calendar year for the maintenance of the common areas (said dues are an estimate and shall be adjusted as needed by the Homeowners Association). There will also be a transfer fee of $300.00 each time a lot is purchased by a new owner.

Section 6.3 Voting. The Owner(s) of each lot shall be entitled to a single vote in the Association for each lot owned, except that the Developer shall be entitled to three (3) votes for each lot owned by the Developer. When more than one person holds an interest in any lot, all such persons shall be members of the Association. The vote for such lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any lot; except the Developer may cast three (3) votes for each lot it holds.

Section 6.4 Bylaws. The bylaws of the Association shall govern the conduct of meetings of the members of the Association, the Board of Directors and other aspects of the operation of the Association not addressed in this Declaration.

Section 6.5 Management During Period of Developer Control. The “Period of Developer Control” shall mean the period beginning on the date this Declaration is first recorded in the office of the Clerk and Recorder of Flathead County, Montana, and ending on the earlier of: (a) the date which is 10
years later or (b) the date on which the Developer has sold 80% of the lots within High Point on 2nd St, Subdivision (including all phases) and the Developer has notified the Association in writing that the Developer has determined that no additional property shall be added to the Subdivision. During the Period of Developer Control, Developer may appoint, remove and replace from time to time any or all of the Directors and Officers of the Association. Each member of the Association gives the Developer an irrevocable proxy for this purpose. If Developer so elects, Developer may from time to time relinquish, either on a temporary or permanent basis, the right to appoint all or a portion of the Directors and Officers of the Association; provided that any such relinquishment shall be expressed in writing to the Association. The Period of Developer Control may be reinstated or extended by agreement between Developer and the Association upon such terms and conditions as the parties agree. After the termination of the Period of Developer Control, the Developer, if still an owner of any lots in the Subdivision, will continue to have all the rights ordinarily given to owners under this Declaration.

Section 6.6 Assessments. Each property owner (except the Developer, as to lots owned by the Developer and not yet sold) agrees to pay to the Association such annual dues and assessments as the Board of Directors shall determine. Such dues and assessments may include amounts for operation of the Association, payment of taxes and insurance on Common Properties, Common Properties maintenance, utilities, and snow removal, a fund for acquisition or replacement of capital improvements, legal and accounting fees, reasonable reserves and any and all other matters determined to be appropriate by the Association for the benefit of the owners and approved or assessed in accordance with the applicable rules and procedures of the Association. The Association dues and assessments shall be the same for each lot of the Subdivision, except as follows:

If the Board of Directors determines in good faith that a portion of dues and assessments benefit fewer than all the lots, such portion shall be assessed only against the benefited lots. Road maintenance repair and replacement shall be considered to benefit all lots equally among all lots. Any trails, paths, open space, or recreation fields may not be removed at any time.

Section 6.7 Developer’s Responsibility for Assessments. Notwithstanding the foregoing, the Developer, although a member of the Association, shall not be responsible at any time for payment of the Assessments with respect to lots owned by the Developer. The foregoing shall include Association dues and assessments, amounts assessed, levied or charged with respect to the water system, and any other amounts charged, levied or assessed any Subdivision lot owner with respect to ownership of property within the Subdivision, except that Developer shall pay its pro-rated share of property taxes assessed against Common Properties within the Subdivision. Developer’s share of the property taxes shall be calculated based on the number of lots owned by Developer as of the date each property tax payment is payable. Also, the Developer shall at all times pay all expenses of maintaining the lots that it owns, including any improvements located thereon. For lots that are sold by Developer during a year, the assessments for that year shall be pro-rated and paid by the purchaser at closing.

Section 6.8 Collection of Assessments. Assessments shall be the personal responsibility of the owners of each lot. In addition, assessments shall be a lien on each lot. Failure to pay assessments will result in a lien statement being filed by the Board of Directors, which shall describe the lot, state the
amount of the unpaid assessment and the date of such assessment. If any assessment is not paid when due, the assessment shall accrue interest at fifteen percent (15%) per annum until paid (or such other rate as the Board of Directors may establish from time to time). A lot owner whose lot is subject to lien must pay the assessment, interest, and costs for preparation of the lien and lien release, and all recording fees before the lien is released. The Association is empowered to initiate any legal action to enforce payment of any past-due assessments, dues, or fees including an action to foreclose any lien on a Subdivision Lot. This lien may also be foreclosed in the manner of foreclosure for mortgages. In the event of litigation, the prevailing party shall be entitled to attorney's fees and costs. The voting rights of an owner whose assessments are delinquent shall be suspended during the period of delinquency.

Section 6.9 Priority of Lien for Assessment. 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:

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

b. Liens for property taxes and other governmental assessments or charges made superior by statute.

c. The lien for all sums unpaid on a First Mortgage, as defined below.

A "First Mortgage" is a mortgage, deed of trust, trust indenture, contract for deed, or other similar financial encumbrance granted by an Owner to secure a debt, (1) which is recorded in the office of the Clerk and Recorder of Flathead County, Montana, before the date of filing of a written lien statement for delinquent assessments, (2) which encumbers a lot, and (3) which is first in priority among all such mortgages, deeds of trust, trust indentures or other similar financial encumbrances. There can only be one First Mortgage with respect to a lot. Any First Mortgagor who acquired 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 purchase 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 attorney’s fees against the lot which accrue prior to the time such First Mortgagor or purchaser acquires title to the lot.

All other persons who hold or who may in the future hold a lien or encumbrance of any type not described in subsection a., b. or c., will be deemed to consent that their lien or encumbrance will be subordinate to the Association’s future liens for assessments, interest, late charges, costs, expenses and attorney’s 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 6.10 Protection of First Mortgage. No violation or breach of, or failure to comply with, any provision contained in this Declaration and no action to enforce any such provision shall affect defeat, render invalid or impair the lien of any First Mortgage on any property taken in good faith and for value and perfected by recording in the Office of the Clerk and Recorder of Flathead County, Montana, prior to the time of recording in said office of a written lien statement for delinquent assessments. No violation, breach, failure to comply or action to enforce this Declaration shall affect,
defeat, render invalid or impair the title or interest of the holder of any First Mortgage or result in any liability, personal or otherwise, of any such holder or purchaser. Any purchaser upon foreclosure shall, however, take subject to his Declaration.

Section 6.11 Statement of Status of Assessments. On written request, the 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 information contained in such statement, when signed by an officer, director or agent of the Association, will be conclusive upon the Association, the Board of Directors, and every owner as to the person or persons to whom such statement is issued and who rely on it in good faith.

Section 6.12 Liability. Neither the Developer, the Association, Architectural Review Committee, nor their respective members, directors, employees nor agents shall be responsible for any actions taken by any of the lot owners.

ARTICLE VII
Architectural Review Committee

Section 7.1 Formation of Committee. An Architectural Review Committee is hereby formed and shall initially consist of three (3) members. During the period of Developer Control, the members of the Architectural Review Committee may be appointed, removed, and replaced by the Developer. After the Period of Developer Control, the Board of Directors shall appoint the members of the Architectural Review Committee. The Developer or parties related to the Developer may serve on the Architectural Review Committee. Members of the Architectural Review Committee are not required to be members of the Association.

Section 7.2 Plans and Specifications. All owners intending to construct a dwelling or build any type of fence, outbuilding or other structure or improvement upon any lot shall first submit their detailed plans and specifications in writing to the Architectural Review Committee, including the following:

a. Site plans showing the location of the house, outbuilding, other structure, and proposed driveway. The plan must also show finished grade elevations.

b. A complete set of building plans including plans for all floors, cross-sections, and elevations showing all dimensions and finished square footage.

c. Plans and samples including exterior materials, colors, finishes and windows being used.

d. Detailed landscaping plans showing the proposed use and preservation of the areas native landscaping on the particular lot.

e. Fencing plans, including materials, colors and sizes and heights.

f. Outdoor lighting plans, including layout, type of light, and colors be specified.
The Architectural Review Committee may require that the applicant submit additional information reasonably required to perform its review function. Any proposed plans and other related or required information shall be submitted with the applicable fee that is required by the Architectural Review Committee.

Section 7.3 Submittal Fee. The initial fee required for the Design Review shall be the sum of $300.00. The Architectural Review Committee may revise the amount of the fee from time to time. If additional professional services are needed, an additional fee will be charged for any of these services.

Section 7.4 Approval. Upon receipt of plans and other required material, the Architectural Review Committee shall review the proposed improvement to determine whether it is in accordance with the goals stated in this Declaration and is otherwise in conformance with the Declaration and the Architectural Design Guidelines. No house, other structure or fence shall be erected, placed or altered on any lot, nor shall any site work be commenced, until the plans and specifications have been approved in writing by the Architectural Review Committee as to such compliance and as to the quality of workmanship and materials, harmony of external design with existing structures, and location of the structure with respect to topography and finish grade elevation. Approval or disapproval by the Architectural Review Committee must be in writing. The design review process specified in the Architectural Design Guidelines must be followed. If the Architectural Review Committee disapproves any portion of the plans and specifications, the reason for such disapproval shall be stated. In the event the Architectural Review Committee fails to act within thirty (30) days after the final plans and specifications of any structure, together with any required fee, have been submitted in writing, or in any event, if no suit to enjoin the construction has commenced prior to the completion of an entire dwelling, no specific approval shall be required for such structure and the pertinent provisions of this Declaration shall be deemed to have been fully complied with.

Section 7.5 Violations of the Design Guidelines. If the Architectural Review Committee, upon its own inspection or upon receiving a complaint, determines that any Owner is violating the Architectural Review Committee’s guidelines, or has failed properly to maintain their own lot or any permanent improvements thereon, including necessary repairs, or has constructed or made any change to any improvement not in conformance with an approved plan, the Architectural Review Committee will notify the Owner in writing. Such notice will contain a statement of the nature of the violation, the steps needed to remedy it, and demanding the Owner remedy it within a period of thirty (30) days. If the Owner fails or refuses to remedy the violation, the Architectural Review Committee, may at its election, correct the deficiency set forth in the notice at the Lot Owner’s expense. If the Lot Owner fails to reimburse the Architectural Review Committee within thirty (30) days after mailing a statement for correcting the deficiencies, the Architectural Review Committee, through the Association, may assess a lien to the same extent as those liens described in Article VI: Sections 6.8 and 6.9 of this Declaration. The remedies provided above are not exclusive and the Architectural Review Committee and the Association may exercise any other remedies allowed by law for violations, including but not limited to injunctive relief.

Section 7.6 Architectural Design Guidelines. The Architectural Review Committee shall adopt guidelines for its overall design review, the design review application process, and its operating...
procedures (referred to as "Architectural Design Guidelines"). The Architectural Design Guidelines may be amended from time to time. It is the responsibility of each owner to obtain and review a copy of the most recently adopted Architectural Design Guidelines.

Section 7.8 Deposit. The Architectural Review Committee may require each owner to provide a deposit in an amount set by the Board to ensure that the roads and other Common Properties are not damaged during construction and that the other provisions of this Declaration and applicable rules and regulations are not violated during construction. If the construction is completed without such damage or violation, the deposit shall be returned to the owner (without interest). If there has been such damage or violations, the deposit may be applied toward remedying such damage or violations. If the owner disagrees that such damage or violations have occurred, the Architectural Review Committee shall give the owner an opportunity to meet with the Architectural Review Committee and provide such evidence as the owner may desire. After considering such evidence the Architectural Review Committee shall make a determination of whether such damages or violations occurred, including the amount thereof and the determination of the Architectural Review Committee, made in good faith, shall be final. If the cost of remedying any such damage or violation exceeds the deposit amount, the owner shall be responsible for any excess costs. Deposit amount for building a new home is set at $2,500 and an additional $1,000 for landscaping, determined by the Architectural Review Committee. Please see ARC forms to see other deposits required for additional projects.

Section 7.9 Liability. Neither the Developer or the Architectural Review Committee nor their respective members, officers, directors, employees or agents shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved under this Article, nor for any defects in construction pursuant to such plans and specifications. Approval of plans and specifications under this Article shall not be deemed in lieu of compliance by owner with applicable building codes or other governmental laws or regulations.

Article VIII
Water and Sewer System

Section 8.1 City of Whitefish Public Works Department. Each lot owner shall privately arrange for the introduction of water and sewer utility service with the City of Whitefish Public Works Department to his or her particular lot. All lots shall be connected to the City of Whitefish water system. This service shall be supplied and utilized subject to the current rules and regulations for the City of Whitefish Water and Sewer Utilities, and to any municipal resolutions and ordinances as made effective by the Whitefish City Council from time to time, all of which are incorporated herein. All structures and the land on which it is located shall comply fully with all specific project requirements, and all City of Whitefish ordinances, codes, and rules and regulations. No community water systems or individual well systems, or individual septic systems shall be permitted.

Section 8.2 Payments. Each lot owner shall pay the required deposit and turn-on fee, if applicable, for the use of city water and/or sewer utility service on his or her particular lot. Each lot owner shall pay for such service in accordance with the rules and regulations for the City of Whitefish.
Water and Sewer Utilities and with the schedule of rates and fees in effect at the time the service is rendered.

Section 8.3 Responsibilities of Lot Owners. Each lot owners shall be solely responsible for service piping between the City curb stop and the point of use. The service line and all appurtenances, including but not limited to the curb box and meter well, shall be the responsibility of the lot owner. The lot owner upon discovery shall repair any leaks in the service line or appurtenances immediately.

Section 8.4 Easements. Each lot owner shall grant an easement to the City of Whitefish Public Works personnel to enter upon the lot owner's premises at reasonable times for the purpose of reading, maintaining, inspecting, installing, connecting, disconnecting, or replacing meters, wiring or other equipment owned or maintained by the City of Whitefish Public Works Department.

Article X
Duration and Amendment

Section 10.1 Duration of Declaration. The provisions of this Declaration are intended to be easements and covenants running with the land, and are intended to be perpetual, except as amended or terminated as provided below. If any provision contained in this Declaration is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation, such provisions shall continue and remain in full force and effect for the period of 21 years following the death of the last to die of the initial members of the Board of Directors of the Homeowner's Association and the then living children of initial Directors, or until the provisions contained in this Declaration are amended or terminated as provided below, whichever first occurs.

Section 10.2 Amendment after Period of Developer Control. After the Period of Developer Control, this Declaration may be amended or repealed as provided in this Section. Any amendment shall require the consent of the owners of sixty percent (60%) of the lots. Such consent may be evidenced by written consent or by vote at a regular or special meeting of the members of the Homeowner's Association, or by a combination of written consents and votes. Any such amendment shall require Whitefish City Council approval. If such consent is received, the Association shall then record in the records of Flathead County, Montana, a document stating the action taken, together with a sworn statement certifying that the required consent was received.

Section 10.3 Unilateral Amendment By Developer. At any time before or after the Period of Developer Control, so long as Developer owns a lot, Developer may unilaterally amend this Declaration (1) if such amendment is solely to comply with applicable law or correct a technical or typographical error, (2) if such amendment does not adversely alter any substantial rights of any owner or mortgagee, or (3) in order to meet the guidelines or regulations of a lender or insurer including, but not limited to, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration or any similar agency. Such amendments shall not require approval of any Owners.

Article XI
General Provisions
Section 11.1 Effect of Provisions of Declaration. Each provision contained in this Declaration, and any agreement, promise, covenant, and undertaking to comply with each provision contained in this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision contained in this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Subdivision is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Subdivision by an owner of the Association, be deemed accepted, ratified, adopted and declared as a personal covenant of such owner or the Association, as the case may be, and, as a personal covenant, shall be binding on such owner or the Association and such owner’s or Association’s respective heirs, personal representatives, successors and assigns; (c) shall be deemed an equitable servitude, running, in each case, as a burden with and upon the title to each parcel of real property within the Subdivision; and (d) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each parcel of real property within the Subdivision.

Section 11.2 Enforcement and Remedies. Each provision contained in this Declaration shall be enforceable by the Association, by the Developer or by any owner who has first made written demand on the Association to enforce such provision and (30) days have lapsed without appropriate action having been taken by the Association. Any enforcement action may be by a proceeding for such relief as may be provided at law or in equity, including but not limited to a temporary or permanent injunction and/or a suit or action to recover damages. Such action may be brought against any person(s) violating or threatening to violate a provision of this Declaration. None of the remedies, which are stated in this Declaration, are intended to be exclusive, and all parties shall have all such remedies as may be provided by law.

Section 11.3 Limited Liability. Neither the Developer, the Association, the Architectural Review Committee or, their respective members, officers, directors, employees or agents shall be liable to any part for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

Section 11.4 Successors and Assigns. Except as otherwise provided herein, the provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Developer, the Association, and each owner and their respective heirs, personal representatives, successors and assigns. Developer may assign some or all of its rights under this Declaration to a third party by a written instrument specifically referring to such rights recorded in the records of Flathead County, Montana. Such instrument may specify the extent and portion of the rights or interests as a Developer, which are being assigned in which case the initial Developer shall retain all other rights of Developer.

Section 11.5 Severability. Invalidity or unenforceability of any provision contained in this Declaration in whole or in part shall not affect the validity or enforceability of any other provision of this Declaration.

Section 11.6 Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision of this Declaration.
Section 11.7 Construction. When necessary for proper construction, the masculine of any word used in any provisions contained in this Declaration shall include the feminine or neuter gender, and the singular the plural, and vice versa.

Section 11.8 No Waiver. Failure to enforce any provision contained in this Declaration on any one or more occasions shall not operate as a waiver of any such provision or of any other provision of this Declaration.

Section 11.9 Attorneys' Fees. In the event of a dispute arising under any provision contained in this Declaration, the prevailing party shall be entitled to its reasonable cost and attorneys' fees incurred.

DATED this 14th day of September, 2015

By: [Signature]

High Point on 2nd, LLC.

STATE OF MONTANA  )

County of Flathead  )

On this 14 day of September, 2015 before me, the undersigned, a Notary Public for the State aforesaid, personally appeared [Signature], known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that such person executed the same in such person's authorized representative capacity on behalf of High Point on 2nd, 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.

Notary Public for the State of Montana

Print or type name
Residing at: WHITEFISH, MT
Commission Expires: 11/3/15

High Point on 2nd - Phase 1, 2 & 3
Declaration of Covenants, Conditions and Restrictions
Page 17
EXHIBIT “A”
Approved Plant List for:
High Point On 2nd Street Subdivision

<table>
<thead>
<tr>
<th>BOTANICAL NAME</th>
<th>COMMON NAME</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NATIVE TREES</strong></td>
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<td>Flame Amur Maple</td>
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<td>Malus 'Spring Snow'</td>
<td>Spring Snow Crabapple</td>
<td>Non-fruiting</td>
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<td>Redosier Dogwood</td>
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<td>Native Perennials &amp; Groundcovers</td>
<td>Ornamental Perennials &amp; Groundcovers</td>
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<td><strong>ORNAMENTAL PERENNIALS &amp; GROUNDCOVERS</strong></td>
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<td>Description</td>
<td>Areas</td>
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<td>Bugbane</td>
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<td><em>Actaea racemosa</em></td>
<td>Bugbane</td>
<td>Shade areas</td>
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<td><em>Anemone canadensis</em></td>
<td>Canada Anemone</td>
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<td>Alpine Columbine</td>
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<td><em>Aruncus dioicus</em></td>
<td>Goatsbeard</td>
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<td><em>Aster laevis</em> <em>'Blue Bird'</em></td>
<td>Joan Elliot Clustered Bellflower</td>
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<td><em>Gaillardia grandiflora</em> <em>'Goblin'</em></td>
<td>Goblin Blanket Flower</td>
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<td>Great Blue Lobelia</td>
<td>Wet areas</td>
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<td>Russell Hybrid Lupine</td>
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<td><em>Monarda</em> <em>'Jacob Cline'</em></td>
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<td><em>Monarda</em> <em>'Raspberry Wine'</em></td>
<td>Raspberry Wine Beebalm</td>
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<td><em>Primula denticulata</em></td>
<td>Drumstick Primrose</td>
<td>Will tolerate wet areas</td>
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<tr>
<td><em>Prunella vulgaris</em></td>
<td>Self Heal</td>
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<tr>
<td><em>Tiarella cordifolia</em></td>
<td>Foamflower</td>
<td>Shade areas</td>
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<tr>
<td><em>Trollius chinensis</em> <em>'Golden Queen'</em></td>
<td>Golden Queen Globeflower</td>
<td>Will tolerate wet areas</td>
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<td><strong>GRASSES (for lawn applications)</strong></td>
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<td><em>Agropyron dasystachyum</em></td>
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<td><em>Agropyron trachycaulum</em></td>
<td>Slender Wheatgrass</td>
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<td>Clustered Field Sedge</td>
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<td>Spartan Hard Fescue</td>
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<td><em>Festuca ovina</em> <em>'Azay'</em></td>
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<td>Rough Fescue</td>
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<td><em>Poa trivialis</em> <em>'Colt'</em></td>
<td>Colt Rough Bluegrass</td>
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<tr>
<td><em>Enviro-Turf Mix (from Bluestem Nursery)</em></td>
<td>Sheep, Chewings, Hard, &amp; Creeping Red Fescues, &amp; Perennial Ryegrass</td>
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</tbody>
</table>
EXHIBIT “B”

Living with Wildlife Covenants:

High Point On 2nd Street Subdivision

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, black bear, mountain lion, coyote, fox, skunk, raccoon and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners “live with wildlife.” Alternatively, see FWP’s web site at www.fwp.mt.gov.

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

1. Homeowners must be aware of the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.

2. Gardens and fruit trees can attract wildlife such as deer. Keep produce and fruit picked and off the ground, because rotting vegetable material can attract bears, skunks and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.

3. Garbage should be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, and dogs.

4. Do not feed wildlife or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in “an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.” Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
5. Pets must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.

6. Pet food should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, and other wildlife. When feeding pets do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.

7. Barbecue grills should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.

8. Consider boundary fencing that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.

9. Compost piles can attract skunks and other wildlife. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)

10. These “living with wildlife” covenants cannot be altered or eliminated without consent of the governing body.
STORMWATER SYSTEM
OPERATION AND MAINTENANCE PLAN
FOR
SECOND STREET RESIDENCES SUBDIVISION

PREPARED FOR:
HOMEOWNERS OF SECOND STREET RESIDENCES SUBDIVISION
AND
CITY OF WHITEFISH PUBLIC WORKS DEPARTMENT

MARCH 2015

PREPARED BY:
48-NORTH P.C.
151 BUSINESS CENTER LOOP, STE A
WHITEFISH, MONTANA 59901
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V. **Hydrodynamic Separator and Upper North Detention Pond**

VI. **Routine HOA Maintenance**

**Appendices:**

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B. Responsibility of HOA for Maintenance of Stormwater Facilities

C. Checklists (Detention Ponds, Catch Basins, Control Structures, Conveyance Pipes)

D. Manufacturer’s Recommendations for Hydrodynamic Separator Maintenance
Stormwater System Operation and Maintenance Plan
for
Second Street Residences Subdivision

I. DEFINITION OF APPLICABLE TERMS

The following are some general definitions that are the principles for maintaining detention ponds:

Detention pond:
A pond designed to hold stormwater runoff and release it at a controlled rate onto the land or into a drainage channel following a storm event.

Hydrodynamic Separator:
A precast concrete structure or series of structures designed to utilize certain fluid dynamic properties to remove pollutants from stormwater.

Tributary drainage area:
The total land area that drains to the pond.

Impervious area:
A solid surface that does not allow rain to enter or infiltrate.

Stormwater runoff:
Runoff that occurs as a result of a rain or storm event hitting an impervious surface and running off.

Outlet:
A structure that controls the rate of release from the pond and the water depth and storage volume in the pond.

Orifice:
A controlled opening on the outlet structure through which stormwater is discharged from the pond (selected ponds).

Trash Rack:
A structural feature of the outlet that filters stormwater by trapping debris before runoff is discharged (selected ponds).

Rip rap:
Rock material typically used to stabilize conveyance channels.

Easement:
A set-aside area with various restrictions to provide open access for inspection or repair of drainage feature.
II. GENERAL INFORMATION

Subdivision:
Second Street Residences

Site Location:
Second Street Residences Subdivision, Whitefish, Montana, 59937
Legal Description – Tracts 1K, 1D, and 1DA in the NE1/4 of the NW1/4 of Section 32, Township 31N, Range 21W, P.M., M., Whitefish, Flathead County, Montana
Please see Appendix “A” for a site map.

Number of Lots:
The original tract of land was 23.79 acres in size. The project entails the subdivision of the land into 57 residential lots, common areas with trails, paved roadways, concrete sidewalk and curb and gutter, water and sewer extensions, stormwater conveyance system, a hydrodynamic separator water quality unit, and stormwater detention ponds.

Regulations:
This Stormwater Management Plan has been developed under the guidelines provided within the City of Whitefish Engineering Standards, dated February 2009.

Development Criteria:
Development goals for stormwater management include a focus on flood protection, downstream conveyance, and receiving-body water quality with respect to both pre-development and post-development conditions. While flooding and property damage occur in larger runoff events approaching the 100-year recurrence interval storm, their low frequency of occurrence have little influence on typical average annual runoff. In contrast, most of the annual pollutant transport and discharge is associated with small rain events in the historic record, along with long pollutant loading periods during winter snow accumulation and infrequent rainfall precipitation events.

III. OBJECTIVE

Hydrodynamic separators and detention ponds are used to improve the quality of urban runoff from roads, parking lots, residential neighborhoods, commercial areas, and industrial sites, and to remove stormwater pollutants and reduce peak stormwater runoff rates by providing treatment and temporary storage during larger storm events. In addition to controlling runoff, detention ponds trap sediment from the tributary drainage area, a very effective way to collect and remove pollutants. In addition, the detention ponds may provide other benefits such as passive recreation and open space opportunities in addition to reducing peak runoff rates and improving water quality. The hydrodynamic separator was installed and commissioned during the final part of the development process to remove Total Suspended Solids and other pollutant constituents contained within the post-development stormwater. A functioning hydrodynamic separator and detention ponds are a requirement for stormwater management. You, as a member of a Homeowner Association
(HOA), need to understand the importance of the hydrodynamic separator and detention pond facilities and your obligation to assure their continued proper function. This stormwater facility maintenance fact sheet will provide the information and the contacts you need to operate a fully functional stormwater treatment facility on your common property.

IV. FACILITY RESPONSIBILITY

Designation of a responsible party is important to assure proper operation of your hydrodynamic separator and detention pond feature. In this instance it is a shared responsibility of the HOA for the correct operation and proper maintenance of the facility. The City of Whitefish Public Works Department is not responsible for the maintenance of these facilities or their structural components, including the outlet works. However the City of Whitefish Public Works Department does have the authority to inspect and review maintenance activities to ensure the viability of your facilities, and easements provide for this.

The HOA is responsible for maintaining the stormwater facilities within the subdivision common areas. This includes the hydrodynamic separator, the Upper North Pond, grassed drainage channels, conveyance piping, and catch basins. The City of Whitefish is responsible for maintaining the drain grates, catch basins, and piping within the public right-of-way. The Lower North Pond and the South Pond will be maintained by the Whitefish Lake Institute. Please see the O&M exhibits in Appendix “A” and the Responsibility of HOA for Maintenance of Stormwater Facilities document in Appendix “B” for further information.

V. HYDRODYNAMIC SEPARATOR AND UPPER NORTH DETENTION POND

Stormwater runoff is a significant source of water pollution in urbanizing areas. In addition, the increased volumes of flow resulting from added impervious areas during urbanization results in increased runoff volumes. Hydrodynamic separators collect and separate many of these pollutants from the stormwater by utilizing certain fluid dynamic properties. Detention ponds mitigate both scenarios in providing a treatment basin for pollutant removal as well as a collection basin to release flows at controlled rates and thus reduce the peak runoff rates downstream. Studies have shown that properly maintained hydrodynamic separators and detention ponds can be very effective at removing certain pollutants and providing necessary management of stormwater volumes during larger storm events. Improperly maintained facilities can increase the discharge of pollutants downstream, increase the risk of flooding downstream, increase the instability of downstream channels, and lead to aesthetic and nuisance problems.

Studies show that poor operation and maintenance is the leading cause of facility failure. Poor maintenance of the detention ponds can also create unpleasant odors, nuisance insects, algae blooms and a generally unsightly, unkempt area. Detention ponds may fail due to:

- poor vegetation maintenance in terms of mowing and weed control,
- clogged inlets resulting from trash and debris, sediment accumulation,
- failed side slopes, and
- inadequate access for routine maintenance activities.

Knowing why these facilities were built in your subdivision community and the importance of all the components working together should reduce the chance of facility failure.

VI. ROUTINE HOA MAINTENANCE

Routine HOA maintenance, like mowing and debris removal, is vital to the proper operation of the hydrodynamic separator and detention pond, and needs to be done on a frequent basis. Non-routine HOA maintenance like slope stabilization and sediment removal will probably be more on an annual basis. Every facility is different in the size, type and characteristics of the tributary area that contributes runoff, as well as the locations of the facilities within the development.

- Facilities serving a large commercial district will likely require more maintenance than those serving an established neighborhood, and facilities in prominent locations in the development will require more frequent collection of trash to make a favorable impression.

- Maintenance considerations for a detention pond will concentrate more on mowing to control the vegetation, frequent removal of the trash and debris that may clog the outlet/trash rack, as well as sediment removal.

- Maintenance considerations for a hydrodynamic separator will need to focus on floating litter/debris and sediment removal.

Maintenance will always be needed; if maintenance is not done, or not done frequently enough or properly, a false sense of security exists for the facility's ability to handle flows during a large storm event and its pollutant removal abilities during a typical runoff event.

Routine maintenance includes:
Inspections: Periodic scheduled inspections with a specified checklist, and inspections after major rainfall events to check for obstructions/damage & to remove debris/trash.

Vegetation Management: Mowing on a regular basis to prevent erosion or aesthetic problems within the detention pond. When mowing, collect grass clippings and all other clippings/trimmings and take offsite for disposal or dispose in trash on site; do not leave in the pond. Limit the use of fertilizers and pesticides in and around the pond to minimize entry into pond and subsequent downstream waters.

Trash, Debris and Litter Removal: Removal of any trash, etc. causing any obstructions at the inlet, outlet, orifice or trash rack of the hydrodynamic separator and detention pond during periodic inspections and especially after every runoff producing rainfall event. In general, pick up trash, etc. in and around the facilities during all inspections.
Structural Component Check: Inspection of the outlet works, inlet, orifice, trash rack, and channel on a regular basis for additions to the annual Non-routine Maintenance list.

Non-routine maintenance includes:
Bank Erosion/Stabilization: In the detention pond it is critical to keep effective ground cover on all vegetated areas in order to see the benefits of proper soil/sediment stabilization and effective filtering of pollutants. All areas not vegetated should be re-vegetated and stabilized immediately.

Sediment Removal: Every six months or so, the accumulated sediment should be removed from the bottom of the hydrodynamic separator and pond outlet structure. Sediment removal for the hydrodynamic separator should be performed at frequencies and depths as recommended by the manufacturer.

Structural Repair/Replacement: Eventually the outlet structure or other structural components like the orifice or trash rack may need to be repaired or replaced.
APPENDIX A

OPERATION AND MAINTENANCE (O&M) EXHIBITS
MAINTENANCE
ROUTINE & AESTHETIC COMPLAINT
REQUIRED AESTHETIC AND NUISANCE ELEMENTS PROVIDED.

1. NECESSARY THE RE

2. DURING
APPENDIX B

RESPONSIBILITY OF HOA FOR MAINTENANCE OF STORMWATER FACILITIES
HOMEOWNER'S ASSOCIATION STORMWATER MANAGEMENT OPERATION AND MAINTENANCE RESPONSIBILITIES

Included with the preliminary plat application was a draft copy of the Declaration of Covenants, Conditions, and Restrictions of the Proposed Subdivision. The following are modifications that should be incorporated into the final draft copy of CC&R's prior to approval and recording of the Final Plat:

DEFINITIONS

"Storm Water Management Facilities" shall mean and refer to Stormwater Improvements and drainage easements as shown on the approved engineering plans and shall include all pond facilities, detention areas, open spaces, drainage swales, Hydrodynamic Separators, catch basins, inlets, manholes, basin outlets, storm sewer service (sump pump drains) pipes, drainage structures, accesses, detention basins, retention basins (including slope stabilization and landscaping) and all other Stormwater related facilities not located within the City of Whitefish Right-of-Way, and installation heretofore or hereafter constructed, installed, maintained or operated in, under, and through the Property.

COMMON AREA

Maintenance of Stormwater Management Facilities

The Association shall supervise, manage, operate, examine, inspect, care for, preserve, repair, replace, restore and maintain all Storm Water Management Facilities located outside City of Whitefish Right-of-Way, all at its own cost and expense, and shall levy against each member of the Association by assessment, a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement of the Storm Water Management Facilities.

The stormwater management facilities operate as a system in the management of stormwater runoff. Their construction and effective operation was predicated on the facilities being managed/operated as a system. For the proper functioning of the Storm Water Management Facilities, it is important that no debris of any kind (dirt, yard waste, landscape clippings etc.) be disposed of on, in, or near the facilities. No dirt, yard waste, landscape clippings or any type of debris should be discarded/placed on the slopes or on any area of the ponds. No landscaping of any kind can be placed on the slopes or on any area of the ponds without the approval of the Board of Directors. Please refer to Appendix “A” of these documents for Stormwater Management Facilities Operation and Maintenance Plan.
FINANCIAL PLAN FOR STORMWATER FACILITIES

Sinking Fund:

\[ A = \frac{F}{(1 + i)^n - 1} \]

\[ F = P(1+i)^n \]

Estimated Inflation Rate, \( i = 2.50\% \)

<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
<th>Replace Every n Years</th>
<th>Estimated Current Replacement Cost, P</th>
<th>Calculated Future Replacement Cost, F</th>
<th>Annual Payments, A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pond Outlet Structure</td>
<td>3</td>
<td>50</td>
<td>$2,000.00</td>
<td>$6,874.22</td>
<td>$70.52</td>
</tr>
<tr>
<td>CDS Water Quality Unit</td>
<td>1</td>
<td>50</td>
<td>$25,000.00</td>
<td>$85,927.72</td>
<td>$881.45</td>
</tr>
<tr>
<td>Annual Pond Maintenance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$500.00</td>
</tr>
<tr>
<td>Annual CDS Unit Maintenance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$500.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td><strong>$1,951.97</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NUMBER OF LOTS = 22

ESTIMATED ANNUAL COST PER LOT = $88.73
APPENDIX C

CHECKLISTS:
* DETENTION PONDS
* DEBRIS BARRIERS
* CONTROL STRUCTURES
* CATCH BASINS
* CONVEYANCE DITCH
* CONVEYANCE STORM PIPE
### Detention Pond

<table>
<thead>
<tr>
<th>Drainage System Feature</th>
<th>Potential Defect</th>
<th>Conditions When Maintenance is Needed</th>
<th>Results Expected When Maintenance is Performed Or Not Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Trash and Debris</td>
<td>Any trash and debris which exceed five cubic feet per 1,000 square feet (this is about equal to the amount of trash it would take to fill one standard size garbage can). In general, there should be no visual evidence of dumping. If less than threshold all trash and debris will be removed as part of next scheduled maintenance.</td>
<td>Trash and debris cleared from site.</td>
</tr>
<tr>
<td></td>
<td>Poisonous Vegetation and Noxious weeds</td>
<td>Any poisonous or nuisance vegetation which may constitute a hazard to maintenance personnel or the public.</td>
<td>No danger of poisonous vegetation where maintenance personnel or the public might normally be. (Coordinate with Clark County Weed Management department).</td>
</tr>
<tr>
<td></td>
<td>Contaminants and Pollution</td>
<td>Any evidence of noxious weeds as defined by State or local regulations. (Apply requirements of adopted IPM policies for the use of herbicides).</td>
<td>Complete eradication of noxious weeds may not be possible. Compliance with State or local eradication policies required.</td>
</tr>
<tr>
<td></td>
<td>Rodent Holes</td>
<td>Any evidence of rodent holes if facility is acting as a dam or berm, or any evidence of water piping through dam or berm via rodent holes.</td>
<td>Rodents destroyed and dam or berm repaired. (Coordinate with Clark County Maintenance and Operations department; coordinate with Ecology Dam Safety Office if pond exceeds 10 acre-feet).</td>
</tr>
<tr>
<td></td>
<td>Beaver Dams</td>
<td>Dam results in change or function of the facility.</td>
<td>Facility is returned to design function. (Coordinate trapping of beavers and removal of dams with appropriate permitting agencies).</td>
</tr>
<tr>
<td></td>
<td>Insects</td>
<td>When insects such as wasps and hornets interfere with maintenance activities.</td>
<td>Insects destroyed or removed from site. Apply insecticides in compliance with adopted Clark County Maintenance and Operations policies.</td>
</tr>
<tr>
<td></td>
<td>Tree Growth and Hazard Trees</td>
<td>Tree growth does not allow maintenance access or interferes with maintenance activity (i.e., slope mowing, silt removal, vactoring, or equipment movements). If trees are not interfering with access or maintenance, do not remove.</td>
<td>Trees do not hinder maintenance activities. Harvested trees should be recycled into mulch or other beneficial uses (e.g., alders for firewood).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If dead, diseased, or dying trees are identified (Use a certified Arborist to determine health of tree or removal requirements)</td>
<td>Remove hazard trees.</td>
</tr>
</tbody>
</table>

---

**Fees:** $409.00

**Date Inspected:**

---

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<table>
<thead>
<tr>
<th>Drainage System Feature</th>
<th>Potential Defect</th>
<th>Conditions When Maintenance Is Needed</th>
<th>Results Expected When Maintenance Is Performed Or Not Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Side Slopes of Pond</td>
<td>Erosion</td>
<td>Eroded damage over two inches deep where cause of damage is still present or where there is potential for continued erosion.</td>
<td>Slopes should be stabilized using appropriate erosion control measure(s); e.g., rock reinforcement, planting of grass, compaction.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Any erosion observed on a compacted berm embankment.</td>
<td>If erosion is occurring on compacted berms a licensed civil engineer should be consulted to resolve source of erosion.</td>
</tr>
<tr>
<td>Storage Area</td>
<td>Sediment</td>
<td>Accumulated sediment that exceeds 10% of the designed pond depth unless otherwise specified or affects inletting or outletting condition of the facility.</td>
<td>Sediment cleaned out to designed pond shape and depth; pond reseeded if necessary to control erosion.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Liner is visible and has more than three 1/4-inch holes in it.</td>
<td>Liner repaired or replaced. Liner is fully covered.</td>
</tr>
<tr>
<td>Pond Berms (Dikes)</td>
<td>Settlements</td>
<td>Any part of berm, which has settled four inches lower than the design elevation. If settlement is apparent, measure berm to determine amount of settlement. Settling can be an indication of more severe problems with the berm or outlet works. A licensed civil engineer should be consulted to determine the source of the settlement.</td>
<td>Dike is built back to the design elevation.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Discernable water flow through pond berm. Ongoing erosion with potential for erosion to continue. (Recommend a Geotechnical engineer be called in to inspect and evaluate condition and recommend repair of condition.</td>
<td>Piping eliminated. Erosion potential resolved.</td>
</tr>
<tr>
<td>Emergency Overflow/</td>
<td>Tree Growth</td>
<td>Tree growth on emergency spillways creates blockage problems and may cause failure of the berm due to uncontrolled overtopping. Tree growth on berms over four feet in height may lead to piping through the berm which could lead to failure of the berm.</td>
<td>Trees should be removed. If root system is small (base less than four inches) the root system may be left in place. Otherwise the roots should be removed and the berm restored. A licensed civil engineer should be consulted for proper berm/spillway restoration.</td>
</tr>
<tr>
<td>Spillway and Berms Over Four Feet in Height.</td>
<td></td>
<td>Discernable water flow through pond berm. Ongoing erosion with potential for erosion to continue. (Recommend a Geotechnical engineer be called in to inspect and evaluate condition and recommend repair of condition.</td>
<td>Piping eliminated. Erosion potential resolved.</td>
</tr>
<tr>
<td>Drainage System Feature</td>
<td>Potential Defect</td>
<td>Conditions When Maintenance Is Needed</td>
<td>Results Expected When Maintenance Is Performed Or Not Needed</td>
</tr>
<tr>
<td>-------------------------</td>
<td>-----------------</td>
<td>---------------------------------------</td>
<td>-------------------------------------------------------------</td>
</tr>
<tr>
<td>Emergency Overflow/Spillway</td>
<td>Rock Missing</td>
<td>Only one layer of rock exists above native soil in area five square feet or larger, or any exposure of native soil at the top of out flow path of spillway. (Rip-rap on inside slopes need not be replaced)</td>
<td>Rocks and pad depth are restored to design standards.</td>
</tr>
<tr>
<td>Emergency Overflow/Spillway</td>
<td>Erosion</td>
<td>Eroded damage over two inches deep where cause of damage is still present or where there is potential for continued erosion.</td>
<td>Slopes should be stabilized using appropriate erosion control measure(s); e.g., rock reinforcement, planting of grass, compaction.</td>
</tr>
<tr>
<td>Emergency Overflow/Spillway</td>
<td>Any erosion observed on a compacted berm embankment.</td>
<td></td>
<td>If erosion is occurring on compacted berms a licensed civil engineer should be consulted to resolve source of erosion.</td>
</tr>
</tbody>
</table>
### Debris Barriers

<table>
<thead>
<tr>
<th>Drainage System Feature</th>
<th>Potential Detect</th>
<th>Conditions When Maintenance Is Needed</th>
<th>Results Expected When Maintenance Is Performed Or Not Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>Trash and Debris</td>
<td>Trash or debris that is plugging more than 20% of the openings in the barrier.</td>
<td>Barrier cleared to design flow capacity.</td>
</tr>
<tr>
<td></td>
<td>Damaged/ Missing Bars</td>
<td>Bars are bent out of shape more than three inches.</td>
<td>Bars in place with no bends more than 3/4 inch.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bars are missing or entire barrier missing.</td>
<td>Bars in place according to design.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bars are loose and rust is causing 50% deterioration to any part of barrier.</td>
<td>Barrier replaced or repaired to design standards.</td>
</tr>
</tbody>
</table>
| Inlet/Outlet Pipe       | Debris barrier missing or not attached to pipe. | Barrier firmly attached to pipe. |}

Date Inspected ____________
## Control Structure/Flow Restrictor

### Date Inspected

<table>
<thead>
<tr>
<th>Drainage System Feature</th>
<th>Potential Defect</th>
<th>Conditions When Maintenance Is Needed</th>
<th>Results Expected When Maintenance Is Performed Or Not Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>Trash and Debris (Includes Sediment)</td>
<td>Material exceeds 25% of sump depth or one foot below orifice plate.</td>
<td>Control structure orifice is not blocked. All trash and debris removed.</td>
</tr>
<tr>
<td></td>
<td>Structural Damage</td>
<td>Structure is not securely attached to manhole wall.</td>
<td>Structure securely attached to wall and outlet pipe.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Structure is not in upright position (allow up to 10% from plumb).</td>
<td>Structure in correct position.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Connections to outlet pipe are not watertight and show signs of rust.</td>
<td>Connections to outlet pipe are watertight; structure repaired or replaced and works as designed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Any holes – other than designed holes – in the structure.</td>
<td>Structure has no holes other than designed holes.</td>
</tr>
<tr>
<td>Cleanout Gate</td>
<td>Damaged or Missing</td>
<td>Cleanout gate is not watertight or is missing.</td>
<td>Gate is watertight and works as designed.</td>
</tr>
<tr>
<td></td>
<td>Obstructions</td>
<td>Gate cannot be moved up and down by one maintenance person.</td>
<td>Gate moves up and down easily and is watertight.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Chain/rod leading to gate is missing or damaged.</td>
<td>Chain is in place and works as designed.</td>
</tr>
<tr>
<td></td>
<td>Obstructions</td>
<td>Gate is rusted over 50% of its surface area.</td>
<td>Gate is repaired or replaced to meet design standards.</td>
</tr>
<tr>
<td>Orifice Plate</td>
<td>Damaged or Missing</td>
<td>Control device is not working properly due to missing, out of place, or bent orifice plate.</td>
<td>Plate is in place and works as designed.</td>
</tr>
<tr>
<td></td>
<td>Obstructions</td>
<td>Any trash, debris, sediment, or vegetation blocking the plate.</td>
<td>Plate is free of all obstructions and works as designed.</td>
</tr>
<tr>
<td>Overflow Pipe</td>
<td>Obstructions</td>
<td>Any trash or debris blocking (or having the potential of blocking) the overflow pipe.</td>
<td>Pipe is free of all obstructions and works as designed.</td>
</tr>
<tr>
<td>Manhole</td>
<td>Cover Not in Place</td>
<td>Cover is missing or only partially in place. Any open manhole requires maintenance.</td>
<td>Manhole is closed.</td>
</tr>
<tr>
<td></td>
<td>Locking Mechanism Not Working</td>
<td>Mechanism cannot be opened by one maintenance person with proper tools. Bolts into frame have less than 1/2 inch of thread (may not apply to self-locking lids).</td>
<td>Mechanism opens with proper tools.</td>
</tr>
<tr>
<td></td>
<td>Cover Difficult to Remove</td>
<td>One maintenance person cannot remove lid after applying normal lifting pressure. Intent is to keep cover from sealing off access to maintenance.</td>
<td>Cover can be removed and reinstalled by one maintenance person.</td>
</tr>
<tr>
<td></td>
<td>Ladder Rungs Unsafe</td>
<td>Ladder is unsafe due to missing rungs, misalignment, not securely attached to structure wall, rust, or cracks.</td>
<td>Ladder meets design standards. Allows maintenance person safe access.</td>
</tr>
<tr>
<td>General</td>
<td>Trash and Debris</td>
<td>Trash or debris which is located immediately in front of the catch basin opening or is blocking inletting capacity of the basin by more than 10%.</td>
<td>No trash or debris located immediately in front of catch basin or on grate opening.</td>
</tr>
<tr>
<td>General</td>
<td>Potential Defect</td>
<td>Conditions When Maintenance is Needed</td>
<td>Results Expected When Maintenance is Performed or Not Needed</td>
</tr>
<tr>
<td>---------</td>
<td>------------------</td>
<td>---------------------------------------</td>
<td>-------------------------------------------------------------</td>
</tr>
<tr>
<td>Trash and Debris</td>
<td>Trash or debris (in the basin) that exceeds 60% of the sump depth as measured from the bottom of basin to invert of the lowest pipe into or out of the basin, but in no case less than a minimum of six inches clearance from the debris surface to the invert of the lowest pipe.</td>
<td>No trash or debris in the catch basin.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Trash or debris in any inlet or outlet pipe blocking more than 1/3 of its height.</td>
<td>Inlet and outlet pipes free of trash or debris.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dead animals or vegetation that could generate odors that could cause complaints or dangerous gases (e.g., methane).</td>
<td>No dead animals or vegetation present within the catch basin.</td>
<td></td>
</tr>
<tr>
<td>Sediment</td>
<td>sediment (in the basin) that exceeds 60% of the sump depth as measured from the bottom of basin to invert of the lowest pipe into or out of the basin, but in no case less than a minimum of six inches clearance from the sediment surface to the invert of the lowest pipe.</td>
<td>No sediment in the catch basin.</td>
<td></td>
</tr>
<tr>
<td>Structure Damage to Frame and/or Top Slab</td>
<td>Top slab has holes larger than two square inches or cracks wider than 1/4 inch (Intent is to make sure no material is running into basin).</td>
<td>Top slab is free of holes and cracks.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Frame not sitting flush on top slab, i.e., separation of more than 3/4 inch of the frame from the top slab. Frame not securely attached.</td>
<td>Frame is sitting flush on the riser rings or top slab and firmly attached.</td>
<td></td>
</tr>
<tr>
<td>Fractures or Cracks in Basin Walls/ Bottom</td>
<td>Grout fillet has separated or cracked wider than 1/2 inch and longer than one foot at the joint of any inlet/outlet pipe or any evidence of soil particles entering catch basin through cracks.</td>
<td>Pipe is regrouted and secure at basin wall.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Maintenance person judges that structure is unsound.</td>
<td>Basin replaced or repaired to design standards.</td>
<td></td>
</tr>
<tr>
<td>Settlement/ Misalignment</td>
<td>If failure of basin has created a safety, function, or design problem.</td>
<td>Basin replaced or repaired to design standards.</td>
<td></td>
</tr>
<tr>
<td>Vegetation</td>
<td>Vegetation growing across and blocking more than 10% of the basin opening.</td>
<td>No vegetation blocking opening to basin.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Vegetation growing in inlet/outlet pipe joints that is more than six inches tall and less than six inches apart.</td>
<td>No vegetation or root growth present.</td>
<td></td>
</tr>
<tr>
<td>Contaminants and Pollution</td>
<td>Any evidence of oil, gasoline, contaminants or other pollutants (Coordinate removal/cleanup with local water quality response agency).</td>
<td>No contaminants or pollutants present.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Catch Basins

<table>
<thead>
<tr>
<th>Drainage System Feature</th>
<th>Potential Defect</th>
<th>Conditions When Maintenance is Needed</th>
<th>Results Expected When Maintenance is Performed Or Not Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Trash and Debris</strong></td>
<td>Trash or debris which is located immediately in front of the catch basin opening or is blocking inlets' capacity of the basin by more than 10%.</td>
<td>No trash or debris located immediately in front of catch basin or on grate opening.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Trash or debris (in the basin) that exceeds 60% of the sump depth as measured from the bottom of basin to invert of the lowest pipe into or out of the basin, but in no case less than a minimum of six inches clearance from the debris surface to the invert of the lowest pipe.</td>
<td>No trash or debris in the catch basin.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Trash or debris in any inlet or outlet pipe blocking more than 1/3 of its height.</td>
<td>Inlet and outlet pipes free of trash or debris.</td>
<td></td>
</tr>
<tr>
<td><strong>Sediment</strong></td>
<td>Sediment (in the basin) that exceeds 60% of the sump depth as measured from the bottom of basin to invert of the lowest pipe into or out of the basin, but in no case less than a minimum of six inches clearance from the sediment surface to the invert of the lowest pipe.</td>
<td>No sediment in the catch basin.</td>
<td></td>
</tr>
<tr>
<td><strong>General</strong></td>
<td>Top slab has holes larger than two square inches or cracks wider than 1/4 inch (Intent is to make sure no material is running into basin).</td>
<td>Top slab is free of holes and cracks.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Frame not sitting flush on top slab, i.e., separation of more than 3/4 inch of the frame from the top slab. Frame not securely attached.</td>
<td>Frame is sitting flush on the riser rings or top slab and firmly attached.</td>
<td></td>
</tr>
<tr>
<td><strong>Structure Damage to Frame and/or Top Slab</strong></td>
<td>Maintenance person judges that structure is unsound.</td>
<td>Replace basin or repair to design standards.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Grout fillet has separated or cracked wider than 1/2 inch and longer than one foot at the joint of any inlet/outlet pipe or any evidence of soil particles entering catch basin through cracks.</td>
<td>Regrout pipe and secure at basin wall.</td>
<td></td>
</tr>
<tr>
<td><strong>Settlement/ Misalignment</strong></td>
<td>If failure of basin has created a safety, function, or design problem.</td>
<td>Replace basin or repair to design standards.</td>
<td></td>
</tr>
<tr>
<td><strong>Vegetation</strong></td>
<td>Vegetation growing across and blocking more than 10% of the basin opening.</td>
<td>No vegetation blocking opening to basin.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Vegetation growing in inlet/outlet pipe joints that is more than six inches tall and less than six inches apart.</td>
<td>No vegetation or root growth present.</td>
<td></td>
</tr>
<tr>
<td><strong>Contaminants and Pollution</strong></td>
<td>Any evidence of oil, gasoline, contaminants or other pollutants (Coordinate removal/cleanup with local water quality response agency).</td>
<td>No contaminants or pollutants present.</td>
<td></td>
</tr>
</tbody>
</table>

**Date Inspected:** __________
<table>
<thead>
<tr>
<th>Drainage Feature</th>
<th>Potential Defect</th>
<th>Conditions When Maintenance Is Needed</th>
<th>Results Expected When Maintenance Is Performed Or Not Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catch Basin Cover</td>
<td>Cover Not In Place</td>
<td>Cover is missing or only partially in place. Any open catch basin requires maintenance.</td>
<td>Catch basin cover is closed.</td>
</tr>
<tr>
<td></td>
<td>Locking Mechanism Not Working</td>
<td>Mechanism cannot be opened by one maintenance person with proper tools. Bolts into frame have less than 1/2 inch of thread.</td>
<td>Mechanism opens with proper tools.</td>
</tr>
<tr>
<td></td>
<td>Cover Difficult to Remove</td>
<td>One maintenance person cannot remove lid after applying normal lifting pressure (intent is to keep cover from sealing off access to maintenance).</td>
<td>Cover can be removed by one maintenance person.</td>
</tr>
<tr>
<td>Ladder</td>
<td>Ladder Rungs Unsafe</td>
<td>Ladder is unsafe due to missing rungs, not securely attached to basin wall, misalignment, rust, cracks, or sharp edges.</td>
<td>Ladder meets design standards and allows maintenance person safe access.</td>
</tr>
<tr>
<td>Metal Grates (If Applicable)</td>
<td>Grate Opening Unsafe</td>
<td>Grate with opening wider than 7/8 inch.</td>
<td>Grate opening meets design standards.</td>
</tr>
<tr>
<td></td>
<td>Trash and Debris</td>
<td>Trash and debris that is blocking more than 20% of grate surface inletting capacity.</td>
<td>Grate free of trash and debris.</td>
</tr>
<tr>
<td></td>
<td>Damaged or Missing</td>
<td>Grate missing or broken member(s) of the grate.</td>
<td>Grate is in place and meets design standards.</td>
</tr>
</tbody>
</table>
## Conveyance Ditch

<table>
<thead>
<tr>
<th>Drainage System Feature</th>
<th>Potential Defect</th>
<th>Conditions When Maintenance is Needed</th>
<th>Results Expected When Maintenance is Performed or Not Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sediment Accumulation</td>
<td>Sediment depth exceeds six inches.</td>
<td>Remove sediment deposits. When finished, ditch should be level from side to side and drain freely in intended direction. There should be no areas of standing water once inflow has ceased.</td>
</tr>
<tr>
<td></td>
<td>Standing Water</td>
<td>Excessive standing water in the ditch between storms due to ditch not draining freely.</td>
<td>If possible, repair cause of poor drainage. This may include, but is not limited to the following activities: remove sediment or trash blockages, improve grade of ditch.</td>
</tr>
<tr>
<td></td>
<td>Eroded or Unstable Side Slopes</td>
<td>When grass is sparse or bare or eroded patches occur in more than 20% of the ditch.</td>
<td>Determine why grass growth is poor and correct that condition. Replant with plugs of grass at eight-inch intervals or reseed. If cause is excessive moisture replace grass with wetland plantings.</td>
</tr>
<tr>
<td></td>
<td>Vegetation</td>
<td>Grass is excessively tall (greater than 15 inches). Nuisance weeds and other vegetation start to take over ditch.</td>
<td>Mow vegetation and/or remove nuisance vegetation so that flow not impeded. Grass should be mowed to a height of three to four inches.</td>
</tr>
<tr>
<td></td>
<td>Inlet/Outlet pipes or culverts</td>
<td>Inlet/outlet areas clogged with sediment and/or debris.</td>
<td>Remove material so that there is no clogging or blockage in the inlet and outlet area.</td>
</tr>
<tr>
<td></td>
<td>Trash and Debris Accumulation</td>
<td>Any trash and debris, which exceed five cubic feet per 1,000 square feet (this is about equal to the amount of trash it would take to fill one standard size garbage can). In general, there should be no visual evidence of dumping.</td>
<td>Remove trash and debris from ditch.</td>
</tr>
<tr>
<td></td>
<td>Erosion/Scouring</td>
<td>Eroded or scoured ditch bottom.</td>
<td>Permanently stabilize ditch bottom.</td>
</tr>
<tr>
<td></td>
<td>Sediment Accumulation</td>
<td>Sediment depth exceeds six inches.</td>
<td>Remove sediment deposits. When finished, ditch should be level from side to side and drain freely in intended direction. There should be no areas of standing water once inflow has ceased.</td>
</tr>
</tbody>
</table>

Date Inspected [___]
## Conveyance Storm Pipe

<table>
<thead>
<tr>
<th>Drainage System Feature</th>
<th>Potential Defect</th>
<th>Conditions When Maintenance Is Needed</th>
<th>Results Expected When Maintenance Is Performed Or Not Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Obstructions, Including Roots</td>
<td>Root enters or deforms pipe, reducing flow.</td>
<td>Use mechanical methods to remove root. Do not put root-dissolving chemicals in storm sewer pipes. If necessary, remove the vegetation over the line.</td>
</tr>
<tr>
<td></td>
<td>Pipe Dented or Broken</td>
<td>Inlet/outlet piping damaged or broken and in need of repair.</td>
<td>Pipe repaired and/or replaced.</td>
</tr>
<tr>
<td>General</td>
<td>Pipe Rusted or Deteriorated</td>
<td>Any part of the piping that is crushed or deformed more than 20% or any other failure to the piping.</td>
<td>Pipe repaired and/or replaced.</td>
</tr>
<tr>
<td></td>
<td>Sediment &amp; Debris</td>
<td>Sediment depth is greater than 20% of pipe diameter.</td>
<td>Install upstream debris traps (where applicable) then clean pipe and remove material.</td>
</tr>
<tr>
<td></td>
<td>Debris barrier or Trash Rack Missing</td>
<td>Stormwater pipes &gt; than 18 inches need debris barrier.</td>
<td>Debris barrier present on all stormwater pipes 18 inches and greater.</td>
</tr>
</tbody>
</table>
APPENDIX D

MANUFACTURER’S RECOMMENDATIONS FOR HYDRODYNAMIC SEPARATOR MAINTENANCE
INTRODUCTION

The CDS unit is an important and effective component of your storm water management program and proper operation and maintenance of the unit are essential to demonstrate your compliance with local, state and federal water pollution control requirements.

The CDS technology features a patented non-blocking, indirect screening technique developed in Australia to treat water runoff. The unit is highly effective in the capture of suspended solids, fine sands and larger particles. Because of its non-blocking screening capacity, the CDS unit is unmatched in its ability to capture and retain gross pollutants such as trash and debris. In short, CDS units capture a very wide range of organic and in-organic solids and pollutants that typically result in tons of captured solids each year such as: Total suspended solids (TSS) and other sedimentitious materials, oil and greases, trash, and other debris (including floatables, neutrally buoyant, and negatively buoyant debris). These pollutants will be captured even under very high flow rate conditions.

CDS units are equipped with conventional oil baffles to capture and retain oil and grease. Laboratory evaluations show that the CDS units are capable of capturing up to 70% of the free oil and grease from storm water. CDS units can also accommodate the addition of oil sorbents within their separation chambers. The addition of the oil sorbents can ensure the permanent removal of 80% to 90% of the free oil and grease from the storm water runoff.

OPERATIONS

The CDS unit is a non-mechanical self-operating system and will function any time there is flow in the storm drainage system. The unit will continue to effectively capture pollutants in flows up to the design capacity even during extreme rainfall events when the design capacity may be exceeded. Pollutants captured in the CDS unit's separation chamber and sump will be retained even when the units design capacity is exceeded.

CDS UNIT INSPECTION

Access to the CDS unit is typically achieved through two manhole access covers – one allows inspection (and cleanout) of the separation chamber (screen/cylinder) & sump and another allows inspection (and cleanout) of sediment captured and retained behind the screen.

The unit should be periodically inspected to determine the amount of accumulated pollutants and to ensure that the cleanout frequency is adequate to handle the predicted pollutant load being processed by the CDS unit. The unit should be periodically inspected for indications of vector infestation, as well. The recommended cleanout of
solids within the CDS unit's sump should occur at 75% to 85% of the sump capacity. However, the sump may be completely full with no impact to the CDS unit's performance.

CONTECH Stormwater Solutions (previously CDS Technologies) recommends the following inspection guidelines: For new initial operation, check the condition of the unit after every runoff event for the first 30 days. For ongoing operations, the unit should be inspected after the first six inches of rainfall at the beginning of the rainfall season and at approximately 30-day intervals. The visual inspection should ascertain that the unit is functioning properly (no blockages or obstructions to inlet and/or separation screen), evidence of vector infestation, and to measure the amount of solid materials that have accumulated in the sump, fine sediment accumulated behind the screen, and floating trash and debris in the separation chamber. This can be done with a calibrated dipstick, tape measure or other measuring instrument so that the depth of deposition in the sump can be tracked.

**CDS UNIT CLEANOUT**

The frequency of cleaning the CDS unit will depend upon the generation of trash and debris and sediments in your application. Cleanout and preventive maintenance schedules will be determined based on operating experience unless precise pollutant loadings have been determined.

Access to the CDS unit is typically achieved through two manhole access covers — one allows cleanout of the separation chamber (screen/cylinder) & sump and another allows cleanout of sediment captured and retained behind the screen. For units possessing a sizable depth below grade (depth to pipe), a single manhole access point would allow both sump cleanout and access behind the screen.

CONTECH Stormwater Solutions Recommends The Following:

**NEW INSTALLATIONS:** Check the condition of the unit after every runoff event for the first 30 days. The visual inspection should ascertain that the unit is functioning properly (no blockages or obstructions to inlet and/or separation screen), measuring the amount of solid materials that have accumulated in the sump, the amount of fine sediment accumulated behind the screen, and determining the amount of floating trash and debris in the separation chamber. This can be done with a calibrated "dip stick" so that the depth of deposition can be tracked. Refer to the "Cleanout Schematic" (Appendix B) for allowable deposition depths and critical distances. Schedules for inspections and cleanout should be based on storm events and pollutant accumulation.

**ONGOING OPERATION:** During the rainfall season, the unit should be inspected at least once every 30 days. The floatables should be removed and the sump cleaned when the sump is 75-85% full. If floatables accumulate more rapidly than the settleable solids, the floatables should be removed using a vactor truck or dip net before the layer thickness exceeds approximately one foot. Cleanout of the CDS unit at the end of a rainfall season is recommended because of the nature of pollutants collected and the potential for odor generation.
from the decomposition of material collected and retained. This end of season cleanout will assist in preventing the discharge of pore water from the CDS® unit during summer months.

**USE OF SORBENTS**—The addition of sorbents is not a requirement for CDS units to effectively control oil and grease from storm water. The conventional oil baffle within a unit assures satisfactory oil and grease removal. However, the addition of sorbents is a unique enhancement capability unique to CDS units, enabling increased oil and grease capture efficiencies beyond that obtainable by conventional oil baffle systems.

Under normal operations, CDS units will provide effluent concentrations of oil and grease that are less than 15 parts per million (ppm) for all dry weather spills where the volume is less than or equal to the spill capture volume of the CDS unit. During wet weather flows, the oil baffle system can be expected to remove between 40 and 70% of the free oil and grease from the storm water runoff.

CONTECH Stormwater Solutions only recommends the addition of sorbents to the separation chamber if there are specific land use activities in the catchment watershed that could produce exceptionally large concentrations of oil and grease in the runoff, concentration levels well above typical amounts. If site evaluations merit an increased control of free oil and grease then oil sorbents can be added to the CDS unit to thoroughly address these particular pollutants of concern.

**Recommended Oil Sorbents**

Rubberizer® Particulate 8-4 mesh or OARS™ Particulate for Filtration, HPT4100 or equal. Rubberizer is supplied by Haz-Mat Response Technologies, Inc. 4626 Sante Fe Street, San Diego, CA 92109 (800) 542-3036. OARS is supplied by AbTech Industries, 4110 N. Scottsdale Road, Suite 235, Scottsdale, AZ 85251 (800) 545-8999.

The amount of sorbent to be added to the CDS separation chamber can be determined if sufficient information is known about the concentration of oil and grease in the runoff. Frequent the actual concentrations of oil and grease are too variable and the amount to be added and frequency of cleaning will be determined by periodic observation of the sorbent. As an initial application, CDS recommends that approximately 4 to 8 pounds of sorbent material be added to the separation chamber of the CDS units per acre of parking lot or road surface per year. Typically this amount of sorbent results in a ½ inch to one (1") inch depth of sorbent material on the liquid surface of the separation chamber. The oil and grease loading of the sorbent material should be observed after major storm events. Oil Sorbent material may also be furnished in pillow or boom configurations.

The sorbent material should be replaced when it is fully discolored by skimming the sorbent from the surface. The sorbent may require disposal as a special or hazardous waste, but will depend on local and state regulatory requirements.
CLEANOUT AND DISPOSAL

A vactor truck is recommended for cleanout of the CDS unit and can be easily accomplished in less than 30-40 minutes for most installations. Standard vactor operations should be employed in the cleanout of the CDS unit. Disposal of material from the CDS unit should be in accordance with the local municipality's requirements. Disposal of the decant material to a POTW is recommended. Field decanting to the storm drainage system is not recommended. Solids can be disposed of in a similar fashion as those materials collected from street sweeping operations and catch-basin cleanouts.

MAINTENANCE

The CDS unit should be pumped down at least once a year and a thorough inspection of the separation chamber (inlet/cylinder and separation screen) and oil baffle performed. The unit's internal components should not show any signs of damage or any loosening of the bolts used to fasten the various components to the manhole structure and to each other. Ideally, the screen should be power washed for the inspection. If any of the internal components is damaged or if any fasteners appear to be damaged or missing, please contact CONTECH at 800.338.2211 to make arrangements to have the damaged items repaired or replaced.

The screen assembly is fabricated from Type 316 stainless steel and fastened with Type 316 stainless steel fasteners that are easily removed and/or replaced with conventional hand tools. The damaged screen assembly should be replaced with the new screen assembly placed in the same orientation as the one that was removed.

CONFINED SPACE

The CDS unit is a confined space environment and only properly trained personnel possessing the necessary safety equipment should enter the unit to perform particular maintenance and/or inspection activities beyond normal procedure. Inspections of the internal components can, in most cases, be accomplished by observations from the ground surface.

VECTOR CONTROL

Most CDS units do not readily facilitate vector infestation. However, for CDS units that may experience extended periods of non-operation (stagnant flow conditions for more than approximately one week) there may be the potential for vector infestation. In the event that these conditions exist, the CDS unit may be designed to minimize potential vector habitation through the use of physical barriers (such as seals, plugs and/or netting) to seal out potential vectors. The CDS unit may also be configured to allow drain-down under favorable soil conditions where infiltration of storm water runoff is permissible. For standard CDS units that show evidence of mosquito infestation, the
application of larvicide is one control strategy that is recommended. Typical larvicide applications are as follows:

**SOLID B.t.i. LARVICIDE**: \(\frac{1}{2}\) to 1 briquet (typically treats 50-100 sq. ft.) one time per month (30-days) or as directed by manufacturer.

**SOLID METHOPRENE LARVICIDE** (not recommended for some locations): \(\frac{1}{2}\) to 1 briquet (typically treats 50-100 sq. ft.) one time per month (30-days) to once every 4-\(\frac{1}{2}\) to 5-months (150-days) or as directed by manufacturer.

**RECORDS OF OPERATION AND MAINTENANCE**

CONTECH Stormwater Solutions recommends that the owner maintain annual records of the operation and maintenance of the CDS unit to document the effective maintenance of this important component of your stormwater management program. The attached *Annual Record of Operations and Maintenance* form (see *Appendix A*) is suggested and should be retained for a minimum period of three years.
APPENDIX A

ANNUAL RECORDS OF OPERATIONS & MAINTENANCE AND INSPECTION CHECKLISTS
ANNUAL RECORD OF OPERATION AND MAINTENANCE

OWNER ________________________________________________________________
ADDRESS ____________________________________________________________
OWNER REPRESENTATIVE ______________________ PHONE __________________

INSTALLATION: MODEL DESIGNATION ___________________________ DATE __________
SITE LOCATION ________________________________________________

INSPECTIONS:

<table>
<thead>
<tr>
<th>DATE/INSPECTOR</th>
<th>SCREEN/INLET INTEGRITY</th>
<th>FLOATABLES DEPTH</th>
<th>DEPTH TO SEDIMENT (inches)</th>
<th>SEDIMENT VOLUME* (CUYDS)</th>
<th>SORBENT DISCOLORATION</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

DEPTH FROM COVER TO BOTTOM OF SUMP (SUMP INVERT) ___________________________
DEPTH FROM COVER TO SUMP @ 75% FULL ______________________________________
VOLUME OF SUMP @ 75% FULL = _______ CUYD
VOLUME/INCH DEPTH ____________ CUFT/IN OF SUMP
VOLUME/FOOT DEPTH ____________ CUYD/FT OF SUMP

*Calculate Sediment Volume = (Depth to Sump Invert – Depth to Sediment)*(Volume/ inch)

OBSERVATIONS OF FUNCTION: ________________________________________________

CLEANOUT:

<table>
<thead>
<tr>
<th>DATE</th>
<th>VOLUME FLOATABLES</th>
<th>VOLUME SEDIMENTS</th>
<th>METHOD OF DISPOSAL OF FLOATABLES, SEDIMENTS, DECANT AND SORBENTS</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

OBSERVATIONS: _____________________________________________________________

SCREEN MAINTENANCE: DATE OF POWER WASHING, INSPECTION AND OBSERVATIONS:

CERTIFICATION: _______________  TITLE: _______________  DATE: _______
INSPECTION CHECKLIST

1. During the rainfall season, inspect and check condition of unit at east once every 30 days

2. Ascertain that the unit is functioning properly (no blockages or obstructions to inlet and/or separation screen)

3. Measure amount of solid materials that have accumulated in the sump (Unit should be cleaned when the sump is 75-85% full)

4. Measure amount of fine sediment accumulated behind the screen

5. Measure amount of floating trash and debris in the separation chamber

MAINTENANCE CHECKLIST

1. Cleanout unit at the end and beginning of the rainfall season

2. Pump down unit (at least once a year) and thoroughly inspect separation chamber, separation screen and oil baffle

3. No visible signs of damage or loosening of bolts to internal components observed *

* If there is any damage to the internal components or any fasteners are damaged or missing please contact CONTECH (800.338.1122).
This Amendment (the “Amendment”) to the Declaration of Covenants, Conditions and Restrictions for High Point on Second Street (the “Declaration”) is made this 19th day of October, 2015, by High Point on 2nd, LLC, a Montana limited liability company (hereinafter referred to as the “Developer”) in this Amendment.

RECITALS:

A. On October 7, 2015, the Declaration was recorded at the office of the Clerk and Recorder of Flathead County, Montana as Instrument No. 201500023596.

B. Pursuant to Article X of the Declaration, the Developer has the right to amend the Declaration because the Developer has sold no lots and currently owns all of the subject real property.

C. The Developer desires to amend the Declaration as set forth below.

NOW THEREFORE, pursuant to the powers retained by the Developer in the Declaration:

1. Modification – Property Subject to Declaration: The legal description of the real property subject to the Declaration is:
a. Phase 1: Lots 1 through 12 and 15 through 38 and all open space areas as shown on the Final Plat of High Point on Second Street, Phase 1, according to the official plat thereof on file with the Clerk and recorder of Flathead County, Montana.

b. Future Phase 2: Commencing at the northeast corner of the Northeast Quarter of the Northwest Quarter of Section 32, Township 31 North, Range 21 West, P.M., M., Flathead County, Montana, which is a found iron pin; Thence S00°21'00"W 609.39 feet to a found iron pin on the southerly R/W of the Burlington Santa Fe Railroad and THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED: Thence leaving said R/W S00°21'54"W 295.45 feet to a found iron pin; Thence N89°39'06"W 208.71 feet to a found iron pin; Thence S00°21'32"W 418.22 feet to a set iron pin on the north R/W of East Second Street; Thence along said R/W N89°56'05"W 279.27 feet to a set iron pin; Thence leaving said R/W N00°20'00"W 184.88 feet to a set iron pin; Thence N15°41'54"W 82.96 feet to a set iron pin; Thence N23°34'25"W 21.77 feet to a set iron pin; Thence N00°20'00"W 125.11 feet to a set iron pin; Thence N09°20'00"E 116.54 feet to a set iron pin; Thence N55°57'56"E 21.12 feet to a set iron pin; Thence N38°10'00"W 192.96 feet to a set iron pin; Thence S46°25'00"W 15.60 feet to a set iron pin; Thence N22°00'00"W 111.70 feet to a set iron pin; Thence N14°17'08"E 96.28 feet to a set iron pin on said southerly R/W of the Burlington Santa Fe Railroad; Thence along said R/W S75°42'52"E 658.05 feet to the point of beginning and containing 7.712 ACRES.

2. **Modification – Name of Subdivision.** The official name of Phase 1 of the subdivision is “High Point on Second Street, Phase 1” as shown on Final Plat of High Point on Second Street, Phase 1 which was recorded in the official records of Flathead County on October 7, 2015 as Instrument No. 201500023595. The official name of Phase 2 of the subdivision will be “High Point on Second Street, Phase 2” which shall be recorded in the official records of Flathead County, Montana in the future. The Declaration refers to the subdivision as “High Point on 2nd Street.” Any reference to the name of Phase 1 in the Declaration or this Amendment shall be amended to be to the correct and official name which is “High Point on Second Street, Phase 1.” Any reference to the name of Phase 2 in the Declaration or this Amendment shall be “High Point on Second Street, Phase 2.”

3. **Modification – Section 2.12.** The following sentence shall be added at the end of Section 2.12:

No tree four inches (4") in diameter or larger shall be cut or trimmed without the prior written approval of the Developer during the Period of Developer Control or the prior written approval of the Association subsequent to the Period of Developer Control.

4. **Modification – Section 2.12.** The following new paragraph shall be added at the end of Section 2.12:

In addition to the other landscaping and tree planting requirements contained herein, every owner shall plant one “Autumn Blaze Maple” (Acer X Freemanii Jeffsred) in the boulevard in front of their residence. For lots 8, 9, and lot 18 through 24, each owner shall plant
one additional tree in the boulevard area under the power lines; "Red Splendor Crabapple" (a/k/a Malus ‘Red Splendor’).

5. **Modification – Section 2.16.** Section 2.16 shall be amended to read:

All driveways shall be finished and paved with asphalt, concrete, or pavers. Driveways shall not exceed eighteen feet (18’) in width. Driveways shall include an appropriate and attractive curb cut and apron where the street transitions to the driveway.

6. **Modification – Section 2.16.** The following paragraph shall be added to the end of Section 2.16:

Lots 24 through 28 shall be either be required to or entitled to construct and use rear entry driveways and rear entry garages on the following terms and conditions:

a. The owner of Lot 25 must construct and use a rear entry driveway. Should the owner of Lot 24 choose to utilize a rear entry driveway, the owner of Lot 25 shall grant the owner of Lot 24 an access easement over the 85’ x 20’ flag portion of Lot 25. Should both of the respective Lot owners choose to use a rear entry driveway, the Owners of Lot 24 and Lot 25 shall enter into a road maintenance and easement agreement whereby the two (2) owners equally share the costs of construction and maintenance of a mutual driveway over the 85’ x 20’ flag portion of Lot 25 and whereby the owner of Lot 25 grants the owner of Lot 24 an access easement over such 85’ x 20’ flag portion of Lot 25. Should the owner of Lot 24 choose to have a front entry driveway off of Wild Rose Lane, the owner of Lot 25 shall bear all of the costs of construction and maintenance of Lot 25’s rear entry driveway. Prior to commencing construction and as part of the architectural review process detailed in Article VII, the owner of Lot 24 shall provide no less than thirty (30) days written notice to the Architectural Review Committee and to the owner of Lot 25 of its decision and plans concerning front versus rear entry driveway.

b. The owner of Lot 26 must construct and use a rear entry driveway. Should the owner of Lot 27 choose to utilize a rear entry driveway, the owner of Lot 26 shall grant the owner of Lot 27 an access easement over the 85’ x 20’ flag portion of Lot 26. Should the owner of Lot 28 choose to utilize a rear entry driveway, the owner of Lot 26 shall grant the owner of Lot 28 an access easement over a strip of land measuring 120’ x 20’ along the northeastern boundary of Lot 26 commencing at Armory Road. Should two (2) or more of the subject Lot owners utilize a rear entry driveway, the participating Lot owners shall enter into a road maintenance and easement agreement whereby the participating owners equally share the costs of construction and maintenance of a mutual driveway. Should the owner of Lot 27 or Lot 28 choose to use a front entry driveway off of Armory Road, such owner or owners shall not receive an easement over Lot 26 and shall not be required to contribute towards the cost of construction and maintenance of any rear entry driveway. Should only Lot 26 choose to use a rear entry driveway, the owner of Lot 26 shall bear all costs of construction and maintenance of such driveway. Prior to commencing construction and as part of the architectural review process detailed in Article VII, the owners of Lot 26 and Lot 28 shall provide no less than thirty (30) days...
written notice to the Architectural Review Committee and to the owners of Lots 26, 27 and 28 of their decision and plans concerning front versus rear entry driveway.

c. All rear entry driveways shall be constructed to City of Whitefish private roadway standards.

d. Prior to commencing construction of a multi-party rear entry driveway, the owners shall enter into and record a road maintenance and easement agreement approved by the Developer during the Period of Developer Control or approved by the Association subsequent to the Period of Developer Control.

e. Should a Lot owner fail to promptly grant an easement or promptly enter into a satisfactory road maintenance agreement as required hereunder (within thirty (30) days of receiving notice hereunder), the subject Lot owner appoints the Developer during the Period of Developer Control or the Association subsequent to the Period of Developer Control as his or her agent and attorney-in-fact and the Developer or Association, as the case may be, shall be entitled, through its manager or managers, as the owner's agent and attorney-in-fact to execute, deliver and record all documents required to grant any required easement and to enter into any required road maintenance agreement. The power of attorney described herein is coupled with an interest and does not terminate on the Lot owner’s disability or death, and continues for as long as the owner owns a Lot in the subdivision.

7. **Modification – Section 6.2.** The first sentence of Section 6.2 shall read:

   Membership dues for the Homeowners Association are estimated at $600.00 per calendar year for the maintenance of the common areas (said dues are an estimate and shall be adjusted annually by the Homeowners Association).

   All other provisions of the Declaration not herein amended or in conflict herewith, are hereby ratified and reaffirmed.

   IN WITNESS WHEREOF, the Managing Member of High Point on 2nd, LLC has signed this Amendment on the date shown above.

   **HIGH POINT ON 2ND, LLC**

   By: RS2, LLC, Managing Member

   By: Sean Averill, Managing Member
STATE OF MONTANA  
County of Flathead

This instrument was acknowledged before me on this 19th day of October, 2015, by Sean Averill as the Managing Member of RS2, LLC, the Managing Member of High Point on 2nd, LLC.

[Signature]

Notary Public for the State of Montana
Residing at Whitefish, MT
My Commission Expires: 11/3/15

[Seal]
SUBDIVISION

Guarantee/Certificate Number:
FT1585-171528

FIDELITY NATIONAL TITLE INSURANCE COMPANY
a corporation, herein called the Company

GUARANTEES

Sands Surveying, Inc.
herein called the Assured, against actual loss not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

LIABILITY EXCLUSIONS AND LIMITATIONS

1. No guarantee is given nor liability assumed with respect to the identity of any party named or referred to in Schedule A or with respect to the validity, legal effect or priority of any matter shown therein.

2. The Company's liability hereunder shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurance herein set forth, but in no event shall the Company's liability exceed the liability amount set forth in Schedule A.

Please note carefully the liability exclusions and limitations and the specific assurances afforded by this guarantee. If you wish additional liability, or assurances other than as contained herein, please contact the Company for further information as to the availability and cost.

Fidelity National Title Company of Flathead Valley, LLC
1807 3rd Ave E
Kalispell, MT 59901

Countersigned By:

Authorized Officer or Agent

Fidelity National Title Insurance Company
By:

President

Attest:

Secretary
The assurances referred to on the face page are:

That, according to those public records which, under the recording laws, impart constructive notice of matter relative to the following described property:

A tract of land, situated, lying and being in the Northeast Quarter of the Northwest Quarter of Section 32, Township 31 North, Range 21 West, P.M., M., Flathead County, Montana, and more particularly described as follows:

Commencing at the NE corner of the Northeast Quarter of the Northwest Quarter of Section 32, Township 31 North, Range 21 West, P.M., M., Flathead County, Montana, which is a found iron pin; thence S00°21'00" W 609.39 feet to a point on the Southerly R/W of the Burlington Santa Fe Railroad and The True Point of Beginning of the tract of land herein described; Thence leaving said R/W S00°21'54" W 298.45 feet to a point; thence N89°39'06" W 208.71 feet to a point; thence S00°21'32" W 418.22 feet to a point on the North R/W of East Second Street; thence along said R/W N89°56'05" W 279.27 feet to a point; thence leaving said R/W N00°21'00" W 184.88 feet to a point; thence N15°41'54" W 82.96 feet to a point; thence N23°34'25" W 21.77 feet to a point; thence N00°20'00" W 125.11 feet to a point; thence N09°20'00" E 116.54 feet to a point; thence N55°57'56" E 21.12 feet to a point; thence N38°10'00" W 192.96 feet to a point; thence S46°25'00" W 15.60 feet to a point; thence N22°00'00" W 111.70 feet to a point; thence N14°17'08" E 96.28 feet to a point on said Southerly R/W of the Burlington Santa Fe Railroad; thence along said R/W S75°42'52" E 658.05 feet to the point of beginning.

To Be Known As: High Point on Second Street, Phase 2

Title to said real property is vested in:

High Point on 2nd, LLC, a Montana limited liability company

subject to the matters shown below under Exceptions, which Exceptions are not necessarily shown in the order of their priority.

END OF SCHEDULE A
SCHEDULE B

a. Rights or claims of parties in possession not shown by the Public Records.

b. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the Land including, but not limited to, insufficient or impaired access and matters contradictory to any survey plat shown by the Public Records.

c. Easements, or claims of easements, not shown by the Public Records.

d. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

e. (a) unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters accepted under (a), (b), (c) are shown by the Public Records.

f. Taxes to special assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

g. County road rights-of-way, not recorded and indexed as a conveyance of record in the office of the Clerk and Recorder pursuant to Title 70, Chapter 21 MCA, including, but not limited to any right of the public to use and occupy those certain roads and trails.

h. Mineral rights, claims or title to minerals in or under said land, including but not limited to metals, oil, gas, coal, or other hydrocarbons, sand, gravel, or stone, and geothermal energy rights, and easement or other rights or matters relating thereto, whether express or implied, recorded, or unrecorded.

SPECIAL EXCEPTIONS:

1. General Taxes for the year 2016
   
   1st Half: $940.15, PAID
   2nd Half: $940.13, PAID
   Tax ID No.: 74-0362200

2. General County Taxes for the year 2017 and subsequent years, which are a lien but not yet due or payable.

3. Any possible additional tax assessments because of construction and/or improvements to the property.

4. Delinquent Water & Sewer Charges of the City of Whitefish, if any.

5. This property lies within the boundaries of Whitefish County Water District and is subject to liens, levies, assessments and easements thereof.

7. This property lies within the boundaries of Ordinance No. 04-21 for Annexation, recorded December 28, 2004 at 2004-363-09460 and will be subject to any levies and assessments thereof.

8. Grant of Temporary Construction Permit to the City of Whitefish
   Recording Date: August 28, 2013
   Recording No.: 201300022181, and all terms, provisions and conditions contained therein.

9. Easement(s) and rights incidental thereto, as granted in a document:
   Granted to: City of Whitefish
   For: utilities and right-of-way
   Recording Date: August 28, 2013
   Recording No.: 201300022182

10. Easement(s) and rights incidental thereto, as granted in a document:
    Granted to: City of Whitefish
    For: utilities
    Recording Date: August 28, 2013
    Recording No.: 201300022183

11. Recitals, notes, sanitary restrictions, ordinances, resolutions, easements, dedications and covenants as contained or referred to on Certificate of Survey No.19897. Reference is hereby made to the survey for more particulars.

12. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document
    Recording Date: October 7, 2015
    Recording No: 201500023596

   Modification(s) of said covenants, conditions and restrictions
   Recording Date: October 19, 2015
   Recording No: 201500024565

13. Recitals, notes, dedications, easements, certificates and covenants as contained on the proposed plat of High Point on Second Street, Phase 2. Reference is hereby made to the plat for more particulars.

14. State of Montana Department of Environmental Quality Certificate of Subdivision Approval, if any, to be recorded with the proposed plat of High Point on Second Street, Phase 2.
15. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other matters which a correct survey would disclose and which are not shown by the public records.

In order to delete the survey exception shown above, a satisfactory survey of the subject Land, which complies with the minimum standards for land surveys made for title insurance purposes, is to be furnished to the Company.

The Company reserves the right to add additional items as disclosed by the survey, or make further requirements after review of the requested documentation.

16. A deed of trust to secure an indebtedness in the amount shown below,
   Amount: $2,024,000.00
   Dated: June 12, 2015
   Trustor/Grantor: High Point on 2nd, LLC, a Montana limited liability company
   Trustee: Fidelity Title of Flathead Valley, LLC
   Beneficiary: American Bank
   Recording Date: June 23, 2015
   Recording No.: 201500012529
   Affects: Premises and other property

17. The land described in the commitment/policy shall not be deemed to include any home trailer or mobile home located on the property.

18. Exceptions and reservations contained in Patents of record.

END OF SCHEDULE B
**FLATHEAD COUNTY**

**2016 REAL ESTATE TAX BILL**

**Assessor:** Ana Lisa Kroetz
**Treasurer:** Nancy Carver

**Address:** 220 East 1st Ave W Suite T Kalispell MT 59901
**Phone:** 406-758-5600

**http://flathed.mt.gov/property_tax**

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**PARTIES WITH OWNERSHIP INTEREST AS OF JANUARY 1, 2016**

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<th>Parties with Ownership Interest as of January 1, 2016</th>
<th>Ownership Interest as of January 1, 2016</th>
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**Type of Property:** Real Estate

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**SUMMARY OF TAXES, LEVIES & FEES**

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**4445**

1st Installment due 11/30/2016 = 940.15
2nd Installment due 05/31/2017 = 940.13

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**ASSSESSOR NUMBER:** 0262200
**TAX BILL NUMBER:** 201643276
**SCHOOL DISTRICT:** 74
**GEO CODE:** 07429332102070000

**Property Location:**

**Property Description:**

- County functions: 16.68%
- Education: 43.39%
- City functions: 14.39%
- Other: 25.64%

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**City Council Packet October 2, 2017   Page 140 of 446**
After recording return to:
High Point on 2nd LLC
Whitefish, MT 59937
Order No. FTFH-01-FT20150501

Recorded by Fidelity National Title
FNT 20150501

WARRANTY DEED

For Value Received as part of an IRS 1031 exchange, Pine Hill, L.P., a Montana limited partnership, the grantor(s) do(es) hereby grant, bargain, sell and convey unto High Point On 2nd, LLC, a Montana limited liability company, 1380 Wisconsin Ave, Whitefish, MT 59937, the grantee(s), the following described premises, in Flathead County, Montana, to-wit:

Tract 2 of Certificate of Survey No. 19897, located and being in the Northeast Quarter of the Northwest Quarter (NE1/4NW1/4) of Section 32, Township 31 North, Range 21 West, P.M., M., Flathead County, Montana

TO HAVE AND TO HOLD unto the Grantee and to the heirs and assigns forever, subject, however, to:

(a) All reservations and exceptions of record and in patents from the United States or the State of Montana;
(b) All existing easements and rights of way of record, building, use zoning, sanitary and environmental restrictions;
(c) Taxes and assessments for the year 2015 and subsequent years;
(d) All prior conveyances, leases or transfers of any interest in minerals, including oil, gas and other hydrocarbons;

Except with reference to items referred to in paragraphs above, this Deed is given with the usual covenants expressed in §30-11-110, Montana Code Annotated.

This conveyance is made and accepted upon the express agreement that the consideration heretofore paid constitutes an adequate and full consideration in money or money's worth.

IN WITNESS WHEREOF, the Grantor has executed this instrument this 22 day of June, 2015.

Pine Hill, L.P., a Montana Limited Partnership

By: ____________________________
    David V. Kaufman, Jr., General Partner

By: ____________________________
    Anita L. Kaufman, General Partner
STATE OF MONTANA
COUNTY OF FLATHEAD

I, Michael Longfield, a Notary Public of the County and State first above written, do hereby certify that David V. Kauffman, Jr. and Anita L. Kauffman personally appeared before me this day and acknowledged the due execution of the foregoing instrument as General Partners of Pine Hill, L.P.

Witness my hand and official seal, this the June 22, 2015

Notary Public

My Commission Expires: ______________________

(SEAL)

MICHAEL LONGFIELD
NOTARY PUBLIC for the State of Montana
Sealizing at Kalispell, Montana
My Commission Expires July 24, 2015
CONSENT TO PLATTING

Pursuant to Section 76-3-612, MCA, the undersigned, American Bank, as beneficiary of a Deed of Trust dated June 12, 2015 to secure a payment in the principle sum of $2,024,000.00, recorded June 23, 2015 as Document #201500012529, hereby consents to the Platting of a tract of land to be known and named as High Point on Second Street, Phase 2.

IN WITNESS WHEREOF, said party has caused their name to be subscribed hereto on the 15th day of August, 2017.

Signature:

Brandann Rohrer, Commercial Lender
Printed Name and Title:

STATE OF Montana SS
COUNTY OF Flathead SS

On this 15th day of August, 2017, before me a Notary Public for the State of Montana, personally appeared Brandann Rohrer, whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same.

Signature:

Printed Name of Notary: Sam Scheel
Notary Public for State of Montana
Residing at: Whitefish, Montana
My Commission Expires: March 21, 2021

City Council Packet October 2, 2017 Page 143 of 446
This Form is for Subdivisions Only

BY: Sands Surveying

FOR: High Point on 2nd LLC

DATE: 8/9/2017

DESCP: High Point on Second Street Ph 2

PURPOSE: Plat

YEARS

ASSESSOR #

2013 thru 2016

0362200

I hereby certify that there are no outstanding taxes on the property assigned the assessor numbers listed above, for the years indicated for each assessor number.

AUG 15 2017

Judy Slight
Deputy Treasurer
(seal)
September 26, 2017

Mayor and City Council
City of Whitefish
PO Box 158
Whitefish, MT 59937

Re: Final Plat for Riverview Meadows (formerly known as MKay Enterprises); WFP 17-06

Honorable Mayor and Councilors:

This office is in receipt of a final plat application for Riverview Meadows. This is a 16-lot subdivision located south of the mall between Highway 93 S and the Whitefish River. The property is zoned WR-1 (One-Family Residential District) and WB-2 (Secondary Business District) with a Planned Unit Development overlay. The preliminary plat was approved by the Whitefish City Council on February 22, 2016, subject to 29 conditions of approval.

The applicant is providing a Subdivision Improvements Agreement (SIA) in the amount of $567,498.99 for outstanding items still under construction. Public Works has reviewed the SIA and agrees with the figures. To approve the subdivision, the Council would also have to consent to the SIA. Following is a list of the conditions of approval and a discussion of how they have been met.

COMPLIANCE WITH PRELIMINARY PLAT CONDITIONS OF APPROVAL:

Condition 1. The subdivision shall comply with Title 12 (Subdivision Regulations) and Title 11 (Zoning Regulations) and all other applicable requirements of the Whitefish City Code, except as amended by these conditions.

- Condition met. The final plat conforms to applicable City Codes and the approval granted by the City Council.

Condition 2. Except as amended by these conditions, the development of the subdivision and planned unit development shall be in substantial conformance with the approved preliminary plat, site plan and elevations that govern the general location of lots, roadways, parking, landscaping and improvements and labeled as "approved plans" by the City Council.
• Condition met. The final plat conforms to applicable City Codes and the approval granted by the City Council.

**Condition 3.** Prior to any pre-construction meeting, construction, excavation, grading or other terrain disturbance, plans for all on and off site infrastructure shall be submitted to and approved by the Whitefish Public Works Department. The improvements (water, sewer, roads, street lights, trails, sidewalks, driveways, etc.) within the development shall be designed and constructed by a licensed engineer and in accordance with the City of Whitefish's design and construction standards. The Public Works Director shall approve the design prior to construction. Plans for grading, drainage, utilities, streets, sidewalks and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement designs shall be accepted by Public Works. (City Engineering Standards, 2009)

• Condition met. See letter from Public Works dated 10-14-16.

**Condition 4.** Approval of the preliminary plat is subject to approval of detailed design of all on and off site improvements, including drainage. Through review of detailed road and drainage plans, applicant is advised that the number, density and/or location of building lots, as well as the location and width of the road right-of-way, and widths of rights-of-way shown on the preliminary plat may change depending upon constructability of roads, pedestrian walkways, and necessary retaining walls within the right-of-way, on-site retention needs, drainage easements or other drainage facilities or appurtenances needed to serve the subject property and/or upstream properties as applicable. This plan shall include a strategy for long-term maintenance. Fill on-site shall be the minimum needed to achieve positive drainage, and the detailed drainage plan will be reviewed by the City using that criterion. (City Engineering Standards, 2009)

• Condition met. See letter from Public Works dated 10-14-16.

**Condition 5.** Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the Public Works and Planning/Building Department. The plan shall include, but may not necessarily be limited to, the following:

- Dust abatement and control of fugitive dust.
- Hours of construction activity.
- Noise abatement.
- Control of erosion and siltation.
- Routing for heavy equipment, hauling, and employees.
- Construction office siting, staging areas for material and vehicles, and employee parking.
- Measures to prevent soil and construction debris from being tracked onto public roadways, including procedures to remove soil and construction debris from roadways as necessary.
- Detours of vehicular, pedestrian, and bicycle traffic as necessary.
- Notation of any street closures or need to work in public right-of-way.
Condition 6. A road extension of Whitefish Avenue shall be fully constructed to the southern edge of the property and shall be signed 'Future Street Connection'. The final location and alignment of this roadway extension shall be determined by the Public Works Director. (Finding 1, 4, 6, 8; Subdivision Regulations, §12-4-15; City Engineering Standards 2009).

Condition 7. A 60-foot right-of-way shall be fully constructed connecting Highway 93 South to Whitefish Avenue with Phase I of the subdivision. The full 60-foot right-of-way shall be dedicated to the City. (Finding 1, 4, 6, 8; Subdivision Regulations, §12-4-15; City Engineering Standards 2009)

Condition 8. A new approach permit shall be obtained from Montana Department of Transportation. Road plans shall be submitted to MDT for review and approval – this shall also include the drainage plan. (Finding 1).

Condition 9. The applicant shall work with the Public Works Department and Montana Department of Transportation on appropriate intersection improvements at Highway 93 South, including conduit for a future stop light. (Finding 1, 8)

Condition 10. Street lighting shall be required in accordance with the Whitefish Standards for Design and Construction. Street and other on-site lighting shall be dark sky compliant and meet the requirements of the City's Outdoor Lighting ordinance. (Zoning Regulations §11-3-25; City Engineering Standards, 2009)

Condition 11. The Fire Marshal shall approve the placement and design of all fire hydrants prior to their installation and fire access. (IFC; Subdivision Regulations §12-4-18; Engineering Standards, 2009)
• Condition met through review of the engineering plans.

**Condition 12.** A Certificate of Subdivision Approval be obtained from the Department of Environmental Quality and written approval by the Whitefish Public Works Department approving the storm drainage, water and sewage facilities for the subdivision. (Subdivision Regulations, Appendix C)

Condition met. See DEQ letters EQ#17-1201 (9-22-16) and EQ#17-1200 (10-17-16).

**Condition 13.** The Whitefish trail shall be installed the entire length of the Whitefish River frontage connecting to trail in the Rivers Edge subdivision. The final details of the trail installation shall be submitted to the Public Works Department for review and approval. (Finding 4; Subdivision Regulations §12-4-11; Pedestrian-Bicycle Plan, 1999)

• Condition met. See letter from Public Works dated 10-14-16 and it is part of the SIA.

**Condition 14.** The developer shall enter into a perpetual public access easement agreement with the City of Whitefish for the Whitefish River trail. This easement shall be recorded with the first phase of the subdivision. (Finding 4)

• Condition met. See face of plat.

**Condition 15.** An open space plan for each phase shall be submitted to the Planning Department for review and approval. Such plan shall include: landscaping, details on the active pocket parks, trail signage – limiting public access and identifying the path for foot traffic only, outdoor lighting, weed abatement, and plan for the open spaces behind and next to the single-family lots to ensure usability, natural surveillance and delineation between private property and neighborhood open spaces. (Finding 4; Subdivision Regulations §12-4-11)

• Condition met. Open spaces plans approved by City, included in the application and are part of the SIA.

**Condition 16.** The installation of both the public and private trails shall meet the full requirements of the Water Quality Protection regulations and, if necessary, the Floodplain regulations. (Zoning Regulations §11-3-29 and §11-7-10)

• Condition met. See letter from Public Works dated 10-14-16.

**Condition 17.** Refuse disposal areas shall be reviewed and approved by the Public Works Department and North Valley Refuse. Such refuse areas shall also include provision for recycling areas for cardboard and plastic. (Engineering Standards, 2009, Whitefish City Council Meeting, 4-18-16)
• Condition met. See letter from Public Works dated 10-14-16 and North Valley Refuse has approved their locations.

Condition 18. Architectural Review approval is required for the multi-family structures prior to the issuance of a building permit. (Zoning Regulations §11-3-3)

• Condition will be met; these structures are not part of the final plat.

Condition 19. The applicant shall provide the City a financial guarantee in the amount of the cash in lieu of affordable housing pursuant to the Planned Unit Development regulations with Phase I of the plat. This financial guarantee, in the amount of $328,000.00, shall be held by the City until such time as the four (4) affordable units are constructed and the Affordable Rental Housing Restrictive Covenant and Agreement with the City has been recorded on Lot 16. In the event the preliminary plat expires or the applicant fails to construct the units, the City shall use the financial guarantee to put toward affordable housing needs within the City limits. (Finding 7, Zoning Regulations §11-2S-3B(1), Resolution No. 15-39)

• Condition met. A financial guarantee was submitted and will be retained until the condition is met.

Condition 20. Four (4) affordable apartments shall be designated within Lot 16. A maximum of two (2) affordable apartments shall be designated per building. Apartments shall have a variety of number of bedrooms and location to serve the greatest variety of clients. The applicant shall enter to an Affordable Rental Housing Restrictive Covenant and Agreement with the City to ensure long-term affordability. This Affordable Rental Housing and Restrictive Covenant and Agreement shall be submitted to the Planning Department for review and recorded on Lot 16 at the time of final plat. (Zoning Regulations §11-2S-3B; Finding 7)

• Condition will be met prior to the start of the multi-family construction.

Condition 21. All areas disturbed because of road and utility construction shall be reseeded as soon as practical to inhibit erosion and spread of noxious weeds. All noxious weeds, as described by Whitefish City Code, shall be removed throughout the life of the development by the recorded property owner or homeowners' association. (Subdivision Regulations §12-4-30)

• Condition met.

Condition 22. Full fire suppression sprinkler and alarm systems shall be installed in structures built on Lots 4, 7, 11, 14, 15 and 16. (IFC; Finding 1)

• Condition met. See note on face of plat.

Condition 23. The following notes shall be placed on the face of the plat:
• House numbers shall be located in a clearly visible location.
• Full fire suppression sprinkler and alarm systems shall be installed in structures built on Lots 4, 7, 11, 14, 15 and 16.
(Subdivision Regulations §12-4-6; Staff Report Finding 5; City Engineering Standards, 2009)

• Condition met See notes on face of plat.

**Condition 24.** A common off-street mail facility shall be provided by the developer and approved by the local post office. (Subdivision Regulations §12-4-24)

• Condition met. See letter from USPS.

**Condition 25.** Prior to approval of the final plat, the applicant shall produce a copy of the proposed Covenants, Conditions and Restrictions (CC&Rs) providing for:
  • Long-term maintenance of the open spaces – including proper mitigation for wildland fire protection and annual maintenance.
  • Long-term weed management plan. The weed management plan shall be submitted to the Planning Department for review and approval prior to final plat.
  • Long-term maintenance plan for drainage and storm water management facilities.
  • The cul-de-sac shown on the final plat is intended to be privately owned and maintained and open to the public. It is understood and agreed that these internal roadways do not conform to City requirements for public roadways. Because of the road configuration, grades and right-of-way widths, these roads are not suitable for all-season maintenance by the public authority. The owners (and successors in interest) of the lots described in this plat will provide for all-season maintenance of the private roadway by creation of a corporation or association to administer and fund the maintenance. This dedication is made with the express understanding that the private roadway will never be maintained by any government agency or public authority. It is understood and agreed that the value of each described lot in this plat is enhanced by the private nature of said roadways. Thus, the area encompassed by said private roadway will not be separately taxed or assessed by any government agency or public authority. (Finding 3; Subdivision Regulations §12-4-30; City Engineering Standards, 2009)

• Condition met. See CC&Rs – 3.25, 6.4, 6.5, and 6.6.

**Condition 26.** This approval does not grant any approval or residential density to Lot 17. Any residential development of Lot 17 will be subject to a new PUD application. (Zoning Regulations, §11-2S)

• Applicant noted this condition. This property is the location of the Marriot hotel.
**Condition 27.** The Mkay Enterprises preliminary plat and planned unit development is approved for three years from Council action. (Subdivision Regulations, §12-3-8)

- Condition met. The preliminary plat was granted on February 22, 2016.

**Condition 28.** Provide a legal description so that the Planned Unit Development overlay only includes Lots 1-16 and Lot 18.

- Condition met. See the description on the face of the plat.

**Condition 29.** The 20-foot access trail and landscape buffer easement on the north edge of the property shall be substantially as depicted in the Plan and Section Elevation presented by the developer during public hearings. The proposed vegetated landscape buffer shall have different heights and kinds of deciduous and conifer shrubs and trees to provide the best sound and sight screening possible between users of the walking path and adjoining properties. Plantings will be responsive to existing site conditions. Buffer will be completed prior to the construction of homes. (Whitefish City Council Meeting, 4-18-16).

- Condition met. See landscaping plan was approved by the City and is part of the SIA.

Please be advised that the Council should act on this application within 30-days following receipt of this recommendation.

Sincerely,

Wendy Compton-Ring, AICP
Senior Planner

Attachments: 2 reproducible mylars of final plat
Final plat application, received 9-11-17
Letter, applicant, 9-11-17
Subdivision Improvement Agreement with Engineers Estimate, 9-1-17
Irrevocable Letter of Credit, Glacier Bank, $567,499.00, 9-7-17
Irrevocable Letter of Credit, Glacier Bank, $328,000.00, 9-7-17
Letter, Construction Observation Report, TD&H, 8-28-17
Letter, Engineer’s Certification, TD&H, Douglas Peppmeier, 9-5-17
Letter, Whitefish Public Works Department, Karin Hilding, 8-3-17
Letter, MDT, Breta Palmer, 10-20-16
Approach Permit, MDT, 8-29-17
COS 20533, 4-26-17
Letter, DEQ, EQ#17-1201, 9-22-16
Letter, DEQ, EQ#17-1200, 10-17-16
Letter, USPS, Scott Foster, 1-15-17
Letter, North Valley Refuse, 11-28-16
Conditions Covenants & Restrictions
Title Report, Stewart Title, Guarantee No. G-0000-436604592, 7-18-17
Consent to Plat, Glacier Bank, Shane Moss, 8-21-17
Treasurer's Certification, 8-8-17
Open Space & Landscaping Plan

c/w/att: Michelle Howke, Whitefish City Clerk

c/wo/att: MKay Enterprises, Michael Morton PO Box 997 Whitefish, MT 59937
Sands Surveying, 2 Village Loop Kalispell, MT 59901
FINAL PLAT APPLICATION

Project /Subdivision Name: Riverview Meadows

Contact Person: Sands Surveying, Inc
Address: 2 Village Loop
Kalispell, MT 59901
Phone No.: (406) 755-6481
E-mail: eric@sandssurveying.com

Owner & Mailing Address: MKay Enterprises
Attn: Michael Morton
P.O. Box 997
Whitefish, MT 59937

Date of Preliminary Plat Approval: April 18, 2017 for the preliminary plat and May 2, 2016 for PUD.

Type of Subdivision: Residential __ X Industrial __ Commercial __ PUD __ Other __

Total Number of Lots in Subdivision 16 Lots

Land in Project (acres) 7.712 Acres

Parkland (acres) 1.042 Common Area _ Cash-in-Lieu $ N/A _ Exempt __

No. of Lots by Type:

Single Family __16-Lots__ Townhouse ______ Mobile Home Park ______
Duplex ______ Apartment ______ Recreational Vehicle Park ______
Commercial ______ Industrial ______ Planned Unit Development ______
Condominium ______ Multi-Family _________________

Legal Description of the Property _ NE1/4SE1/4 of Section 1, T30N, 22W (See Plat).________

FILING FEE ATTACHED $6104.00

Minor Subdivision with approved preliminary plat $1,056 + $200/lot
Major Subdivision with approved preliminary plat $2,574 + $200/lot
Subdivisions with Waiver of Preliminary Plat $1,980 + $200/lot
Subdivision Improvements Agreement $ 330

SEP 11 2017
**The plat must be signed by all owners of record, the surveyor and the examining land surveyor.**

Attach a letter, which lists each condition of preliminary plat approval, and individually state how each condition has specifically been met. In cases where documentation is required, such as an engineer’s certification, State Department of Health certification, etc., original letters shall be submitted. Blanket statements stating, for example, “all improvements are in place” are not acceptable.

A complete final plat application must be submitted no less than 60 days prior to expiration date of the preliminary plat.

When all application materials are submitted to the Planning & Building Department, and the staff finds the application is complete, the staff will submit a report to the City Council. The Council must act within 30 days of receipt of the revised preliminary plat application and staff report. Incomplete submittals will not be accepted and will not be forwarded to the Council for approval. Changes to the approved preliminary plat may necessitate reconsideration by the Planning Board.

I certify that all information submitted is true, accurate and complete. I understand that incomplete information will not be accepted and that false information will delay the application and may invalidate any approval. The signing of this application signifies approval for Planning & Building staff to be present on the property for routine monitoring and inspection during the approval and development process.

**NOTE:** Please be advised that the County Clerk & Recorder and the City of Whitefish request that all subdivision final plat applications be accompanied with digital copies.

**A digital copy of the final plat in a Drawing Interchange File (DXF) format or an AutoCAD file format, consisting of the following layers:**

1. Exterior boundary of subdivision
2. Lot or park boundaries
3. Easements
4. Roads or rights-of-way
5. A tie to either an existing subdivision corner or a corner of the public land survey system
September 11, 2017

City of Whitefish Planning and Building Department
P.O. Box 158
Whitefish, MT 59937

RE: Final Plat submittal for Riverview Meadows Subdivision.

Dear Planning Office:

This cover letter is intended to give an overview of the conditions of approval and the supporting documentation for meeting the conditions of the Riverview Meadows Subdivision. The Whitefish City Council granted preliminary plat approval of the subdivision on April 18, 2016 subject to the following conditions and PUD Approval on second reading at the May 2, 2016 meeting.

Preliminary Plat Conditions

Condition #1: The subdivision shall comply with Title 12 (Subdivision Regulations) and Title 11 (Zoning Regulations) and all other applicable requirements of the Whitefish City Code as amended by these conditions.

This condition is met. The Subdivision complies with Title 12 and Title 11.

Condition #2: Except as amended by these conditions, the development of the subdivision and planned unit development shall be in substantial conformance with the approved preliminary plat, site plan and elevations that govern the general location of lots, roadways, parking, landscaping and improvements and labeled as “approved plans” by the City Council.

This condition is met. The plat reflects the design of the approved preliminary plat.

Condition #3: Prior to any pre-construction meeting, construction, excavation, grading or other terrain disturbance, plans for all on and off site infrastructure shall be submitted to and approved by the Whitefish Public Works Department. The improvements (water, sewer, roads, street lights, trails, sidewalks, driveways, etc.) within the development shall be designed and constructed by a licensed engineer and in accordance with the City of Whitefish’s design and construction standards. The Public Works Director shall approve the design prior to construction. Plans for grading, drainage, utilities, streets, sidewalks and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement design shall be accepted by public works.
This condition is met. See letter from Whitefish Public Works Department dated October 14, 2016.

Condition #4: Approval of the preliminary plat is subject to approval of detailed design of all on and off site improvements, including drainage. Through review of detailed road and drainage plans, the applicant is advised that the number, density and/or location of building lots, as well as, the location and width of the road right-of-way, and widths of right-of-way shown on the preliminary plat may change depending upon constructability of roads, pedestrian walkways, and necessary retaining walls within the right-of-way, on-site retention needs, drainage easements or other drainage facilities or appurtenances needed to serve the subject property and/or upstream properties as applicable. This plan shall include a strategy for long-term maintenance. Fill on-site shall be the minimum needed to achieve positive drainage, and the detailed drainage plan will be reviewed by the City using that criterion.

This condition is met. See letter dated October 14, 2016 from the Whitefish Public Works Department.

Condition #5: Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the Public Works. The plan shall include, but not necessarily be limited to, the following:

- Dust abatement and control of fugitive dust.
- Hours of construction activity.
- Noise abatement.
- Control of erosion and siltation.
- Routing for heavy equipment, hauling, and employees.
- Construction office siting, staging areas for material and vehicles, and employee parking.
- Measures to prevent soil and construction debris from being tracked onto public roadways, including procedures to remove soil and construction debris from roadways as necessary.
- Detours of vehicular, pedestrian, and bicycle traffic as necessary.
- Notation of any street closures or need to work in public right-of-way.

This condition is met. See letter dated October 14, 2016 from the Whitefish Public Works Department.

Condition #6: A road extension of Whitefish Avenue shall be fully constructed to the southern edge of the property and shall be signed “Future Street Connection”. The final location and alignment of this roadway extension shall be determined by the Public Works Director.

This condition is met. The street connection was approved by the Public Works Department.

Condition #7: A 60-foot right-of-way shall be fully constructed connecting Highway 93 South to Whitefish Avenue with Phase 1 of the subdivision. The full 60-foot right-of-way shall be dedicated to the City.

The south 30-feet of right-of-way is shown on the face of the final plat and the dedication language also appears on the face of the final plat. The north 30-feet of the right-of-way was dedicated to the City by COS20533 recorded on April 26, 2017.
Condition #8: A new approach permit shall be obtained from the Montana Department of Transportation. Road plans shall be submitted to MDT for review and approval – this shall also include the drainage plan.

This condition is met. See attached MDOT utility permit dated October 20, 2016 and Approach Permit dated August 29, 2017.

Condition #9: The applicant shall work with the Public Works Department and Montana Department of Transportation on appropriate intersection improvements at Highway 93 South, including conduit for a future stoplight.

This condition is met. The applicant has secured permits for the MDOT for the new street construction as well as the intersection design at Akers and 93. TD&H provided a construction observation report with this application that documents the construction of the conduit for the signal controls.

Condition #10: Street lighting shall be required in accordance with the Whitefish Standards for Design and Construction. Street and other on-site lighting shall be dark sky compliant and meet the requirements of the City Outdoor Lighting Ordinance.

This condition is met. Street lights were approved by public works and there construction is addressed in the attached SIA (Item 27). Lighting is addressed ion Section 3.27 of the CC&R's

Condition #11: The Fire Marshal shall approve the placement and design of all fire hydrants prior to their installation and fire access.

This condition is met. The Fire Marshall approved hydrant locations through the Public Works review of the construction drawings.

Condition #12: That a Certificate of Subdivision Approval be obtained from the Department of Environmental Quality and written approval by the Whitefish Public Works Department approving the stormwater drainage, water and sewerage treatment facilities for the subdivision.

This condition is met. See the MFE approval by the Whitefish Public Works Department and the MDEQ approvals EQ#17-1200 and EQ#17-1201 from the Montana Department of Environmental Quality.

Condition #13: The Whitefish trail shall be installed the entire length of the Whitefish River frontage connected to the trail in Rivers Edge Subdivision. The final details of the trail installation shall be submitted to the Public Works Department for review and approval.

This condition is met. See letter dated October 14, 2016 from the Whitefish Public Works Department

Condition #14: The developer shall enter into a perpetual public access easement agreement with the City of Whitefish for the Whitefish River Trail. This easement shall be recorded with the first phase of the subdivision.

This condition is met. The easement is dedicated on the face of the Phase 1 Final plat.
Condition #15: An open space plan for each phase shall be submitted to the Planning Department for review and approval. Such plan shall include: landscaping, details on the active pocket parks, trail signage – limiting public access and identifying the path for foot traffic only, outdoor lighting, weed abatement, and plan for the open spaces behind and next to the single family lots to ensure usability, natural surveillance and delineation between private property and neighborhood open spaces.

This condition is met. The plans were submitted to the Planning Office for review and approval.

Condition #16: The installation of both public and private trails shall meet the full requirements of the Water Quality Protection regulations and if necessary, the Floodplain Regulations.

This condition is met. The trails have been approved by the City.

Condition #17: Refuse disposal areas shall be reviewed and approved by the Public Works Department and North Valley Refuse. Such refuse areas shall also include provision for recycling areas for cardboard and plastic.

This condition is met. North Valley Refuse has approved the refuse location.

Condition #18: Architectural Review approval is required for the multi-family structures prior to the issuance of a building permit.

This condition is acknowledged.

Condition #19: The applicant shall provide the City a financial guarantee in the amount of the cash-in-lieu of affordable housing pursuant to the Planned Unit Development regulations with Phase 1 of the Plat. This financial guarantee, in the amount of $328,000.00, shall be held by the City until such time as the four affordable housing units are constructed and the Affordable Rental Housing Restrictive Covenant and Agreement with the City has been recorded on Lot 16. In the event the preliminary plat expires or the applicant fails to construct the units, the City shall use the financial guarantee to put toward affordable housing needs within the City limits.

This condition is met. Guarantee is enclosed.

Condition #20: Four affordable apartments shall be designated within Lot 16. A maximum of two affordable apartments shall be designated per building. Apartments shall have a variety of number of bedrooms and location to serve the greatest variety of clients. The applicant shall enter into an Affordable Rental Housing Restrictive Covenant and Agreement with the City to ensure long-term affordability. This Affordable Rental Housing and Restrictive Covenant and Agreement shall be submitted to the Planning Department for review and recorded on Lot 16 at the time of final plat

This condition is met per review by Planning Staff and City Attorney.

Condition #21: All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and spread of noxious weeds. All noxious weeds, as described by the Whitefish City Code, shall be removed throughout the life of the development by the recorded property owner or homeowners' association.
This condition is met.

**Condition #22:** Full fire suppression sprinkler and alarm systems shall be installed in structures built on Lots 4, 7, 11, 14, 15, and 16.

This condition is met. See Section 3.14 of the CC&R's

**Condition #23:** The following notes shall be placed on the face of the final plat:
- House numbers shall be located in a clearly visible location.
- Full fire suppression sprinkler and alarm systems shall be installed in structures built on Lots 4, 7, 11, 14, 15, and 16.

This condition is met. The note appears on the face of the final plat.

**Condition #24:** A common off-street mail facility shall be provided by the developer and approved by the local post office.

This condition is met. The USPS approved the location of the mailbox site

**Condition #25:** Prior to approval of the final plat, the applicant shall produce a copy of the proposed CC&R's providing for:
- Long-term maintenance of the open spaces – including proper mitigation for wildland fire protection and annual maintenance.
- Long-term weed management plan. Weed management plan shall be submitted to the Planning Department for review and approval prior to final plat;
- Long-term maintenance plan for drainage and stormwater management facilities
- The cul-de-sac shown on the final plat is intended to be privately owned and maintained and open to the public. It is understood and agreed that these internal roadways do not conform to the City requirements for public roadways. Because of the road configuration, grades and rights-of-way widths, these roads are not suitable for all-season maintenance by the public authority. The owners (and successors in interest) of the lots described in this plat will provide for all-season maintenance of the private roadways by creation of a corporation or association to administer and fund the maintenance. This dedication is made with the express understanding that the private roadway will never be maintained by any government agency or public authority. It is understood and agreed that the value of each described lot in this plat is enhanced by the private nature of said roadways. Thus the area encompassed by said private roadway will not be separately taxed or assessed by any government of public authority

This condition is met. See Section 3.25, 6.4, 6.5, and 6.6 of the attached CC&R's.

**Condition #26:** This approval does not grant any approval or residential density to Lot 17. Any residential development of Lot 17 will be subject to a new PUD application.

This condition is acknowledged.

**Condition #27:** The Mkay Enterprises preliminary Plat and Planned Unit Development is approved for three years from Council Action.
This condition is met. Preliminary plat expires on April 18, 2019.

Condition #28: Provide a legal description so that the Planned Unit Development overlay only includes Lots 1-16 and Lot 18.

This condition is met. See legal description of Riverview Meadows on the face of the final plat. The description could also be Lots 1-16 and all common areas of the Plat of Riverview Meadows once the plat is of record.

Condition #29: The 20-foot access trail and landscape buffer easement on the north edge of the property shall be substantially as depicted in the Plan and Section Elevation presented by the developer during public hearing. The proposed vegetated landscape buffer shall have different heights and kinds of deciduous and conifer shrubs and trees to provide the best sound and sight screening possible between users of the walking path and adjoining properties. Plantings will be responsive to existing site conditions. Buffer will be completed prior to the construction of homes.

This condition is met. The path is designed and approved and the construction is included in items 51 – 67 of the proposed Subdivision Improvements Agreement.

A title report is included with this application along with the consent to plats. Taxes are paid in full. Should you have any questions regarding this final plat application, please contact me at 755-6481.

Sincerely,

Eric H. Mulcahy, AICP
Sands Surveying Inc.

Attachments: Final Plat Application
$6,104.00 Application Fee
Subdivision Improvements Agreement
Letter of Credit
$328,000.00 Financial Guarantee for affordable housing units
Letter – TD&H, Doug Peppmeier, PE
Letter – Whitefish Public Works Department, dated 8/3/17
Letter – Whitefish Public Works Department, dated 10/14/16
MDOT Utility Agreement Approval (10/20/16)
MDOT Approach Permit (8/29/17)
TD&H Construction Observation Report (8/28/17)
Copy of COS 20533, Dedication 30’ of City Street
Municipal Facility Exclusion Checklist
MDEQ approvals EQ# 17-12-1, dated 9/22/16 and EQ#17-1200, dated 10/17/16
Letter – USPS (1/15/17)
Letter North Valley Refuse (11/28/16)
CC&R’s Riverview Meadows, signed not yet recorded)
Title Report – Stewart Title; File #: 63434; Guarantee #: G-0000-436604592
Dated: July 18, 2017
Consent to Plat – 8/21/17
Tax Certification (8/8/17)
SUBDIVISION IMPROVEMENT AGREEMENT
RIVERVIEW MEADOWS

THIS AGREEMENT, made and entered into this _____ day of ____________, 2017, by and between MKay Enterprises, hereinafter called the Subdivider, and the City of Whitefish, State of Montana:

WHEREAS, subdivisions are subject to the provisions of Title 76, Chapter 3, Parts 1 through 6, M.C.A., said provisions being known as the “Montana Subdivision and Platting Act,” hereinafter referred to as the Act; and,

WHEREAS, the Act requires that Governing Bodies adopt and provide for the enforcement of subdivision regulations; and,

WHEREAS, the Governing Body of Whitefish, being the City Council, has adopted a body of ordinances entitled “Whitefish Subdivision Regulations” hereinafter referred to as the Regulations; and,

WHEREAS, the regulations provide that:

A. One of the conditions which must precede approval of the final plat of a subdivision by the Governing Body is an approved guarantee of completion of public improvements which are described and provided for in the subdivision plat.

B. The Regulations authorize various alternative methods of effecting the necessary and prerequisite guarantees and one such method is a written agreement between the Subdivider and the Governing Body; and,

WHEREAS, it is the intent and purpose of both Subdivider and Governing Body to hereby enter into an agreement which will guarantee the full and satisfactory completion of all public improvements within the subdivisions hereinafter described and by this agreement to satisfy the public improvement guarantee conditions for final plat approval.

THEREFORE, it is covenanted and agreed as follows:

This agreement pertains to and includes the proposed subdivision which is designated and identified as Riverview Meadows.

This agreement specifically includes the following improvements described on Exhibit "A" attached hereto and incorporated herein by reference, their projected construction completion date and estimated construction costs. All such improvements shall be done in a workman-like manner and shall be completed by December 31, 2017, a date at least sixty (60) days before the expiration of the collateral held by the City of Whitefish. Exhibit "A" includes a certification by an engineer licensed in the state of Montana to the effect that it represents a comprehensive and detailed list of all incomplete items and their actual cost, and that all information contained on it is true and accurate.
As a guarantee of performance to install the above designated improvements, the Subdivider hereby and concurrently with the subscription and execution of this agreement and the City's Subdivision Regulations which require that a subdivider shall provide a financial security of 125% of the estimated total cost of construction of said improvements, provides the City of Whitefish, Montana with a guarantee in collateral in the amount of $567,498.99.

The Subdivider does hereby confirm that said guarantee is from a bank or other reputable institution or individual and acceptable to the Whitefish City Council. This guarantee shall be deposited with the City of Whitefish and certify to the following:

a. That the creditor guarantees funds in an amount equal to the cost, as estimated by the Subdivider, and approved by the governing body, of completing the required improvements.

b. That if the Subdivider fails to complete the specified improvements within the required time period, the creditor will pay to the City of Whitefish immediately, and without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit given in the letter.

c. That this letter of credit may not be withdrawn, or reduced in any amount, until released by the City of Whitefish, Montana.

Performance by the Subdivider of the covenants set out in this agreement and in conformance with the time schedule set forth in this agreement is the essence; accordingly, the Subdivider expressly understands and agrees that failure to meet the time schedule to the specifications described herein shall be deemed to be a breach to this agreement. The Subdivider hereby waives any notice of breach.

Upon any breach of this agreement as herein defined, the Subdivider shall be subject to the penalties and enforcement outlined in the Regulations.

In consideration of the covenants and acts of the Subdivider, the Whitefish City Council does hereby agree that the public improvement guarantee provision has been satisfied for Riverview Meadows, which is the subject of this agreement, provided that nothing herein shall be construed to be final plat approval or assurance of final plat approval.

This agreement shall inure to the benefit of and be binding upon any successors in interest, heirs, or assignees.

IN WITNESS WHEREOF, the parties to this agreement have executed the same on the day and year first above written:

MKay Enterprises

By: Michael Morton, Managing Member
STATE OF MONTANA)  

County of Flathead 

On this 1ST day of SEPTEMBER, 2017, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Michael Morton, MKay Enterprises, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

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

(SEAL)

LAURA PRINGNITZ  
Name of Notarial Officer (Stamped, Typed or Printed)

Title: NOTARY PUBLIC

Residing at: WHITEFISH  

My Commission expires: APRIL 10, 2019

This agreement is hereby approved and accepted by the City Council, City of Whitefish, Montana this____day of_____________________, 20____.

__________________________
MAYOR John Muhfeld  
City of Whitefish, Montana

(SEAL)

ATTEST:

__________________________
CITY CLERK, Whitefish, Montana
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**Phase I - Street/Site Work:**

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<td>10</td>
<td>3-1/2&quot; Minus Crushed Base Course for roadway (12&quot; Thick)</td>
<td>CY.</td>
<td>2,131</td>
<td>$28.00</td>
<td>$59,668.00</td>
</tr>
<tr>
<td>11</td>
<td>Geotextile Separation Fabric</td>
<td>S.Y.</td>
<td>6,393</td>
<td>$1.10</td>
<td>$7,092.30</td>
</tr>
<tr>
<td>12</td>
<td>Asphalt Concrete Pavement (4&quot; Thick)</td>
<td>S.Y.</td>
<td>5,411</td>
<td>$14.50</td>
<td>$78,459.50</td>
</tr>
<tr>
<td>13</td>
<td>Concrete Curb and Gutter</td>
<td>L.F.</td>
<td>2,995</td>
<td>$17.30</td>
<td>$41,433.50</td>
</tr>
<tr>
<td>14</td>
<td>Mosable Concrete Curb and Gutter (Biaxta Grid)</td>
<td>L.F.</td>
<td>551</td>
<td>$18.00</td>
<td>$9,918.00</td>
</tr>
<tr>
<td>15</td>
<td>3-1/2&quot; Minus Crushed Base for Concrete Sidewalk &amp; Driveway (6&quot; Thick)</td>
<td>CY.</td>
<td>189</td>
<td>$9.60</td>
<td>$1,814.40</td>
</tr>
<tr>
<td>16</td>
<td>Concrete Sidewalk (6&quot; Thick)</td>
<td>S.Y.</td>
<td>1,100</td>
<td>$29.80</td>
<td>$32,780.00</td>
</tr>
<tr>
<td>17</td>
<td>Concrete Driveway Approach (6&quot; Thick)</td>
<td>S.Y.</td>
<td>100</td>
<td>$43.65</td>
<td>$4,365.00</td>
</tr>
<tr>
<td>18</td>
<td>Waterborne Striping</td>
<td>L.S.</td>
<td>1</td>
<td>$7,120.00</td>
<td>$7,120.00</td>
</tr>
<tr>
<td>19</td>
<td>Temporary Traffic Control</td>
<td>L.S.</td>
<td>1</td>
<td>$2,000.00</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>20</td>
<td>Street Signage</td>
<td>L.S.</td>
<td>1</td>
<td>$2,175.00</td>
<td>$2,175.00</td>
</tr>
<tr>
<td>21</td>
<td>Pedestrian Ramps</td>
<td>EA.</td>
<td>8</td>
<td>$608.00</td>
<td>$4,864.00</td>
</tr>
</tbody>
</table>

**Phase I - Power / Phone / Cable / Improvements:**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>Electrical Conduit</td>
<td>L.F.</td>
<td>4,165</td>
<td>$1.43</td>
<td>$6,039.25</td>
</tr>
<tr>
<td>23</td>
<td>CATV Conduit (2&quot;)</td>
<td>L.F.</td>
<td>2,439</td>
<td>$1.25</td>
<td>$3,048.75</td>
</tr>
<tr>
<td>24</td>
<td>Telephone/Fiber Optic Conduit (3&quot;)</td>
<td>L.F.</td>
<td>2,429</td>
<td>$1.25</td>
<td>$3,036.25</td>
</tr>
<tr>
<td>25</td>
<td>Pull Boxes</td>
<td>EA.</td>
<td>9</td>
<td>$486.00</td>
<td>$4,374.00</td>
</tr>
<tr>
<td>26</td>
<td>Power Pedestals (pick-up &amp; install)</td>
<td>EA.</td>
<td>7</td>
<td>$105.00</td>
<td>$735.00</td>
</tr>
<tr>
<td>27</td>
<td>Street Lights</td>
<td>EA.</td>
<td>9</td>
<td>$4,200.00</td>
<td>$38,160.00</td>
</tr>
<tr>
<td>28</td>
<td>Single Phase Utility Vaults</td>
<td>EA.</td>
<td>2</td>
<td>$750.00</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>29</td>
<td>3-Phase Utility Vaults</td>
<td>EA.</td>
<td>2</td>
<td>$1,120.00</td>
<td>$2,240.00</td>
</tr>
<tr>
<td>30</td>
<td>5kV Utility Trenching and Backfill</td>
<td>L.F.</td>
<td>2,652</td>
<td>$3.50</td>
<td>$9,235.00</td>
</tr>
</tbody>
</table>

**Phase I - Sewer Improvements:**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>8&quot; PVC Gravity Sewer</td>
<td>L.F.</td>
<td>1,462</td>
<td>$22.20</td>
<td>$32,124.40</td>
</tr>
<tr>
<td>32</td>
<td>Sanitary Sewer Service</td>
<td>EA.</td>
<td>23</td>
<td>$1,275.00</td>
<td>$29,292.50</td>
</tr>
<tr>
<td>33</td>
<td>Sanitary Sewer Manhole</td>
<td>EA.</td>
<td>10</td>
<td>$2,785.00</td>
<td>$27,850.00</td>
</tr>
<tr>
<td>34</td>
<td>Connect to Existing Manhole (Whitefish Ave)</td>
<td>L.S.</td>
<td>1</td>
<td>$915.00</td>
<td>$915.00</td>
</tr>
</tbody>
</table>

**Phase I - Water Main Improvements:**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>35</td>
<td>8&quot; Water Main</td>
<td>L.F.</td>
<td>1,385</td>
<td>$24.00</td>
<td>$33,264.00</td>
</tr>
<tr>
<td>36</td>
<td>8&quot; Gate Valve &amp; Box</td>
<td>EA.</td>
<td>5</td>
<td>$1,410.00</td>
<td>$7,050.00</td>
</tr>
<tr>
<td>37</td>
<td>Existing Water Main Connection</td>
<td>L.S.</td>
<td>3</td>
<td>$3,380.00</td>
<td>$7,140.00</td>
</tr>
<tr>
<td>38</td>
<td>Irrigation Water Service (3&quot;)</td>
<td>EA.</td>
<td>3</td>
<td>$1,050.00</td>
<td>$3,150.00</td>
</tr>
<tr>
<td>39</td>
<td>Domestic Water Service (1&quot;)</td>
<td>EA.</td>
<td>13</td>
<td>$1,000.00</td>
<td>$13,000.00</td>
</tr>
<tr>
<td>40</td>
<td>Domestic Water Service (2&quot;) - Hotel &amp; Apartments</td>
<td>EA.</td>
<td>2</td>
<td>$1,700.00</td>
<td>$3,400.00</td>
</tr>
<tr>
<td>41</td>
<td>Fire Water Service (4&quot;) - Hotel &amp; Apartments</td>
<td>EA.</td>
<td>2</td>
<td>$2,320.00</td>
<td>$4,640.00</td>
</tr>
<tr>
<td>42</td>
<td>Fire Hydrant &amp; Assembly (Hydrant, Valve, and Valve Box)</td>
<td>EA.</td>
<td>4</td>
<td>$3,960.00</td>
<td>$15,840.00</td>
</tr>
<tr>
<td>43</td>
<td>Fire Hydrant &amp; Assembly Replacement (Hydrant, Valve, and Valve Box)</td>
<td>EA.</td>
<td>1</td>
<td>$2,930.00</td>
<td>$2,930.00</td>
</tr>
</tbody>
</table>
### Phase I - Storm Sewer Improvements

<table>
<thead>
<tr>
<th>CO#</th>
<th>CHANGE ORDER #2</th>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Remove and replace existing fire hydrant at Intersection of Hwy. 93 and Akers Lane</td>
<td>L.S.</td>
<td>1</td>
<td>$8,160.21</td>
<td>$8,160.21</td>
</tr>
<tr>
<td>2</td>
<td>Add 2&quot; fire services at lots 4, 7, and 11</td>
<td>L.S.</td>
<td>1</td>
<td>$10,150.00</td>
<td>$10,150.00</td>
</tr>
<tr>
<td>3</td>
<td>6&quot; Dia. Downstream Defender water quality treatment device vs. 8&quot; Dia.</td>
<td>EA.</td>
<td>1</td>
<td>$5,230.00</td>
<td>$5,230.00</td>
</tr>
<tr>
<td>4</td>
<td>Excavation - 2&quot; of additional excavation depth for roadway section</td>
<td>C.Y.</td>
<td>355</td>
<td>$3,052.00</td>
<td>$1,201,340</td>
</tr>
<tr>
<td>5</td>
<td>1-1/2&quot; minus crushed base course for roadway - 2&quot; lift</td>
<td>C.Y.</td>
<td>-55</td>
<td>$9,940.00</td>
<td>$9,940.00</td>
</tr>
<tr>
<td>6</td>
<td>3/4&quot; minus crushed leveling course for roadway (4&quot;)</td>
<td>C.Y.</td>
<td>730</td>
<td>$3,772.50</td>
<td>$3,772.50</td>
</tr>
<tr>
<td>7</td>
<td>Add rock barriera at end of Whitefish Ave. extension</td>
<td>L.S.</td>
<td>1</td>
<td>$1,000.00</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>8</td>
<td>8&quot; Water Main</td>
<td>L.F.</td>
<td>-229</td>
<td>$24.00</td>
<td>$(5,496.00)</td>
</tr>
<tr>
<td>9</td>
<td>10&quot; Water Main</td>
<td>L.F.</td>
<td>360</td>
<td>$12,384.00</td>
<td>$12,384.00</td>
</tr>
<tr>
<td>10</td>
<td>Add 4&quot; roadway underdrain to typical road section (see sheets C7.3 &amp; C7.3)</td>
<td>L.F.</td>
<td>2,927</td>
<td>$7,865.00</td>
<td>$23,555.00</td>
</tr>
<tr>
<td>11</td>
<td>Single Phase Utility Vaults</td>
<td>L.S.</td>
<td>4</td>
<td>$3,000.00</td>
<td>$12,000.00</td>
</tr>
<tr>
<td>12</td>
<td>Revised storm drain outfall detail (see sheet C6.3)</td>
<td>L.S.</td>
<td>1</td>
<td>$5,000.00</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>13</td>
<td>Connect to existing sewer manhole (had to bottom manhole section)</td>
<td>L.S.</td>
<td>1</td>
<td>$2,785.00</td>
<td>$2,785.00</td>
</tr>
<tr>
<td>14</td>
<td>New 6&quot; gate valve for hydrant at station 407+30</td>
<td>L.S.</td>
<td>1</td>
<td>$582.00</td>
<td>$582.00</td>
</tr>
<tr>
<td>15</td>
<td>Repair unlocated 6&quot; sewer service - south of existing MH at station 500+00</td>
<td>L.S.</td>
<td>1</td>
<td>$726.37</td>
<td>$726.37</td>
</tr>
<tr>
<td>16</td>
<td>Reinstall existing 8&quot; gate valve - connect to existing at station 408+126</td>
<td>L.S.</td>
<td>1</td>
<td>$512.53</td>
<td>$512.53</td>
</tr>
</tbody>
</table>

**Change Order Subtotal =**

**Total Contract Price Including CO#1 =**

### Phase II - Path Improvements

<table>
<thead>
<tr>
<th>CO#</th>
<th>DESCRIPTION</th>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>51</td>
<td>Mobilization/Ben mobilization/Boading</td>
<td>L.S.</td>
<td>1</td>
<td>$16,425.00</td>
<td>$16,425.00</td>
</tr>
<tr>
<td>52</td>
<td>Construction Surveying</td>
<td>L.S.</td>
<td>1</td>
<td>$4,000.00</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>53</td>
<td>Erosion Control and Sediment Control</td>
<td>L.S.</td>
<td>1</td>
<td>$4,500.00</td>
<td>$4,500.00</td>
</tr>
<tr>
<td>54</td>
<td>Topsoil Stripping</td>
<td>C.Y.</td>
<td>500</td>
<td>$4,500.00</td>
<td>$2,250.00</td>
</tr>
<tr>
<td>55</td>
<td>Clearing/Grubbing</td>
<td>L.S.</td>
<td>1</td>
<td>$9,700.00</td>
<td>$9,700.00</td>
</tr>
<tr>
<td>56</td>
<td>Embankment</td>
<td>C.Y.</td>
<td>1</td>
<td>$8,100.00</td>
<td>$8,100.00</td>
</tr>
<tr>
<td>57</td>
<td>Excavation</td>
<td>C.Y.</td>
<td>100</td>
<td>$1,600.00</td>
<td>$1,600.00</td>
</tr>
<tr>
<td>58</td>
<td>Asphalt Concrete Pavement (2.5&quot; Thick)</td>
<td>S.Y.</td>
<td>385</td>
<td>$6,160.00</td>
<td>$6,160.00</td>
</tr>
<tr>
<td>59</td>
<td>1/2&quot;– 4&quot; minus Aggregate Base for Asphalt Pavement 0&quot; Thick</td>
<td>C.Y.</td>
<td>145</td>
<td>$7,950.00</td>
<td>$7,950.00</td>
</tr>
<tr>
<td>60</td>
<td>Geostat Seperation Fabric</td>
<td>S.Y.</td>
<td>385</td>
<td>$962.50</td>
<td>$373,000.00</td>
</tr>
<tr>
<td>61</td>
<td>Retaining Wall (MSE / Allan Block)</td>
<td>S.F.</td>
<td>1,490</td>
<td>$65,780.00</td>
<td>$65,780.00</td>
</tr>
<tr>
<td>62</td>
<td>Retaining Wall Handrail</td>
<td>L.F.</td>
<td>165</td>
<td>$11,950.00</td>
<td>$11,950.00</td>
</tr>
<tr>
<td>63</td>
<td>Metal Fences</td>
<td>EA.</td>
<td>3</td>
<td>$1,500.00</td>
<td>$4,500.00</td>
</tr>
<tr>
<td>64</td>
<td>Path Lighting Consulat (3-1/4&quot;)</td>
<td>L.F.</td>
<td>380</td>
<td>$608.00</td>
<td>$228,000.00</td>
</tr>
<tr>
<td>65</td>
<td>Dry Utility Trenching and Backfill</td>
<td>L.F.</td>
<td>380</td>
<td>$2,280.00</td>
<td>$2,280.00</td>
</tr>
<tr>
<td>66</td>
<td>Railroad Lights</td>
<td>EA.</td>
<td>3</td>
<td>$10,500.00</td>
<td>$10,500.00</td>
</tr>
<tr>
<td>67</td>
<td>Landscaping Improvements (Irrigation, plantings, gravel access trail)</td>
<td>L.S.</td>
<td>1</td>
<td>$85,000.00</td>
<td>$85,000.00</td>
</tr>
</tbody>
</table>

**Path Improvements Subtotal =**

**Total Contract Price Including CO#1 =**

**Amount Completed & Installed to Date =**

**Estimated Total Cost of Construction Remodeling =**

City Council Packet October 2, 2017   Page 169 of 446
IRREVOCABLE LETTER OF CREDIT

Letter of Credit No. 3109171001348
Dated: September 7, 2017
Expiration Date: February 28, 2018
Amount: $567,499.00

Whitefish City Council
City of Whitefish
P. O. Box 138
Whitefish, MT 59937

We hereby establish in your favor an Irrevocable Letter of Credit up to the aggregate amount of $567,499.00 (Five Hundred Sixty Seven Thousand Four Hundred Ninety Nine Dollars and 00/100) at the request of Mkay Enterprises.

If Mkay Enterprises fails to complete the specified improvements in the Riverview Meadows Subdivision with the time period set forth in the Subdivision Improvements Agreement executed between Mkay Enterprises and the City of Whitefish, we will pay on demand your draft or drafts for such funds, to the limit of credit set forth herein, as are required to complete said improvements. All drafts must indicate the number and date of this letter of credit and be accompanied by a signed statement of an authorized official that the amount is drawn to install improvements not installed in conformance with the Subdivision Improvements Agreement and specify the default or defect in question.

All drafts must be presented prior to the expiration date stated above, and this letter of credit must accompany the final draft for payment.

This letter may not be withdrawn or reduced in any amount prior to its expiration date except by your draft or written release.
This Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (2007 Revision), International Chamber of Commerce No. 600, shall be governed by and construed in accordance with the laws of the State of Montana and applicable U.S. Federal Law.

GLACIER BANK

签字: Shane Moss, Vice President
IRREVOCABLE LETTER OF CREDIT

Letter of Credit No. 3109171001349
Dated: September 7, 2017
Expiration Date: October 30, 2018
Amount: $328,000.00

Whitefish City Council
City of Whitefish
P. O. Box 138
Whitefish, MT 59937

We hereby establish in your favor an Irrevocable Letter of Credit up to the aggregate amount of $328,000.00 (Three Hundred Twenty Eight Thousand Dollars and 00/100) at the request of Mkay Enterprises.

If Mkay Enterprises fails to complete the specified improvements in the Riverview Meadows Subdivision with the time period set forth in the Subdivision Improvements Agreement executed between Mkay Enterprises and the City of Whitefish, we will pay on demand your draft or drafts for such funds, to the limit of credit set forth herein, as are required to complete said improvements. All drafts mush indicate the number and date of this letter of credit and be accompanied by a signed statement of an authorized official that the amount is drawn to install improvements not installed in conformance with the Subdivision Improvements Agreement and specify the default or defect in question.

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GLACIER BANK

Shane Moss, Vice President
CONSTRUCTION OBSERVATION REPORT

Client: MKAY  Date: 28 August 2017
Project: RIVERVIEW MEADOWS  Weather: Mostly clear,
Job No: K15-052  64 - 78°
Contractor: CUTTING EDGE EXCAVATION  Time on Site: 9:40 – 11:51

Present:

Owner: 
Contractor: Kraig Trippel, Marc Blandon, Zane Stenslie – Cutting Edge
Engineer: Terry Stonehocker – TD&H
Other: 

OBSERVATIONS/COMMENTS:

Cutting Edge was finishing the paving base course grading on Akers and were placing and grading the base course on Whitefish and Bonita. CMG Geotechnical was on-site to perform density testing on the Akers base course gravel.

The contractor had placed the 4-inch schedule 40 conduit pair across the approach of Akers for the future signal power and controls at that intersection. There is an end marker at the north end of the conduit. The conduits will need extensions to reach beyond the sidewalk aprons on both sides of Akers.

Cutting Edge was also raising manhole rims and valve boxes to grade in preparation for paving which is scheduled to begin tomorrow morning. Current City of Whitefish standards call for no tracer-wires penetrating valve-boxes; discussed this with Zane.

Copies to:
Michael Morton  Marc Blandon
Steven Kay  Kraig Trippel
Randy Reynolds  Shane Moss
Karin Hilding  Doug Peppmeier

Terence L. Stonehocker, PE
Construction Engineer
TD&H ENGINEERING
Alignment of the signal conduit pair.

Signal conduit end
Grading the base course gravel on Whitefish Ave.
September 5, 2017

City of Whitefish – Public Works Department
Attn: Craig Workman, P.E.
418 E. 2nd Street
Whitefish, MT 59937

RE: RIVERVIEW MEADOWS – ENGINEER’S CERTIFICATION
FINAL PLAT CERTIFICATION

Dear Craig,

As required for submittal of a final plat application, this letter is to serve as certification that the subdivider (MKay Enterprises) has provided for inspection of all required public improvements and TD&H Engineering certifies that all completed improvements as of September 5, 2017 have been completed in the required manner per the approved plans and specifications. I, Douglas Peppmeier, P.E. am a professional engineer licensed in the state of Montana and certify the following:

1. All required improvements are complete;
2. The improvements are in compliance with the plans and specifications approved by the City engineer, the public works department, the fire chief or designee and planning department;
3. There are no known defects in these improvements;
4. The improvements are free and clear of any encumbrance or lien;
5. A schedule of remaining construction costs will be filed with the city as per the requirements of the Subdivision Improvements Agreement (SIA); and
6. All applicable fees and surcharges have been paid. (Ord. 09-23, 11-16-2009)

If you have any questions or need any additional information, please feel free to contact me directly.

Sincerely,

Douglas Peppmeier, P.E.
V.P. / Regional Manager
TD&H ENGINEERING
August 3, 2017

Mr. Doug Peppmeier
TD&H Engineering
450 Corporate Drive, Suite 101
Kalispell, MT 59901

Re: Riverview Meadows Phase II Plans and Specifications

Dear Doug:

This letter is regarding the Riverview Meadows Phase II Plans and Specifications. The revised engineering plans, dated August 2, 2017, have been reviewed and approved by the Public Works Department. This includes the plans and specifications for the Whitefish River Trail.

Approval is subject to the following condition:

1. The Operation and Maintenance manual will be incorporated into Owner’s Association Conditions, Covenants, and Restrictions (CC&Rs).

The City’s water and sewer system have adequate capacity to serve this project. Approval is given with the understanding that any deviation from the approved plans and specifications will be submitted to the Public Works Department for review and approval. As a condition precedent of receiving final acceptance of infrastructure improvements, the property owner, developer, or contractor shall provide the City with a maintenance bond of ten percent of the total value of the improvements. The bond shall remain in place for a two-year period after acceptance of the City infrastructure.

Upon project completion and before final acceptance, the Professional Engineer shall submit record drawings and certify in writing that the construction meets the requirements of the approved construction documents. Any contractor working in the City right-of-way must fill out a right-of-way permit with the associated insurance and bonding requirement. Please call 863-2450 if you have any questions.
Sincerely,

Karin Hilding, PE
Senior Project Engineer
# CONSTRUCTION PLANS
FOR
RIVerview MeAdows
SUBDIVISION IMPROVEMENTS - PHASE II
WHITEFISH, MONTANA
AUGUST 2017

## Sheet Index

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**TOTAL 48 SHEETS**

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City Council Packet October 2, 2017  Page 182 of 446
October 14, 2016

Mr. Doug Peppmeier  
TD&H Engineering  
450 Corporate Drive, Suite 101  
Kalispell, MT 59901

Re: Riverview Meadows Plans and Specifications

Dear Doug:

This letter is in regard to the Riverview Meadows Plans and Specifications. The revised engineering plans have been reviewed and approved by the Public Works Department.

Approval is subject to the following conditions:

1. An Operation and Maintenance manual for the Downstream Defender will be incorporated into Owner's Association Conditions, Covenants, and Restrictions (CC&Rs).
2. That the review comments of the Planning Department will be incorporated into the Landscaping Plans.
3. Detailed plans and specifications for the Whitefish River Trail will be submitted to the City for review.

The City's water and sewer system have adequate capacity to serve this project. Approval is given with the understanding that any deviation from the approved plans and specifications will be submitted to the Public Works Department for review and approval. As a condition precedent of receiving final acceptance of infrastructure improvements, the property owner, developer, or contractor shall provide the City with a maintenance bond of ten percent of the total value of the improvements. The bond shall remain in place for a two-year period after acceptance of the City infrastructure.

Upon project completion and before final acceptance, the Professional Engineer shall submit record drawings and certify in writing that the construction meets the requirements of the approved construction documents. Any contractor working in the City right-of-way must fill out a right-of-way permit with the associated insurance and bonding requirement. Please call 863-2450 if you have any questions.

Sincerely,

Karin Hiltying, PE  
Senior Project Engineer
October 20, 2016

City of Whitefish
Attn: Craig Workman, Director of Public Works
P.O. Box 158
Whitefish, MT 59937

AGREEMENT NUMBER: P 5 126+0.433 ~ 126+0.440

Dear Craig,

Attached is your approved Utility Occupancy and Location Agreement number P 5 126+0.433 ~ 126+0.440.

This installation is subject to compliance with the Administrative Rules of Montana (18.7.201 - 18.7.232), and the Guidelines for Utility Occupancy on Highway Right-of-way. The following addendum is part of this agreement:

Hard hats and safety vests must be worn by all personnel within the r/w.

Highway Right-of-Way will be cleaned up and seeded before the contractor leaves the project.

The agreement requires that the City of Whitefish notify the inspector John Gray, in the Whitefish Section, 862-3068 at least 48 hours prior to work starting, and again for a clean-up inspection before your construction crew moves out.

Approval is granted on the understanding that the City of Whitefish will perform the installations according to the attached plans. Field revisions may be arranged with prior approval from this office. If the installations fail to follow the approved plan, MDT will consider the Occupancy Permits void.

The City of Whitefish must abide by MDT's signing standards, restore the premises to the prior existing condition, and must secure permission of the property owner wherever MDT holds right-of-way by permit or easement. All vehicles extraneous to the work under way must be placed at least thirty (30) feet, and bore pits ten (10) feet, from the shoulder.

A copy of the approved UTL967 Utility Occupancy permit is required on the job site. MDT will shut down the utility installation if the utility fails to comply with all conditions of the permits.

Breta Palmer
Kalispell Area Engineering Officer
406.751.2004

Copies: John Gray, Section Person through Dennis Oliver, Field Maintenance Supervisor
TD&H, Doug Peppmeier, P.E.
District Utilities File
Montana Department of Transportation
UTILITY OCCUPANCY
AND LOCATION AGREEMENT

Complied By Utility
Date Submitted: October 15, 2016
Work Order Number:
Applicant/Utility: City of Whitefish
Address: P.O. Box 158
Telephone: 863-2460
City: Whitefish State MT ZIP: 59937
Email: cworkman@cityofwhitefish.org

Facility Description:
1) Overhead Facilities: Size: 
Type: 
2) Underground Facilities: Size: 8" Public Water
Type: PVC C-900, DR-18
3) Other:

Location:
Route: U.S. Highway 93 (N-38)
1) Longitudinal: from milepost (station) 126+0.37 to milepost (station) 126+0.44
2) Centerline crossing at milepost (station): 126+0.44
3) Down guys not in parallel with the roadway at milepost(s): N/A
4) Section 1 Township T30N Range R22W County Flathead

Submit this agreement in triplicate and attach:
a. Construction Prints. (Highway prints preferred.) Distances from R/W line, centerline and existing utilities, to the proposed installation.
b. Environmental Checklist (MDT-ENV-006) Click Here for Environmental Checklist

The utility will notify John Gray in Whitefish phone 862-3068 at least 48 hours in advance of any work detailed in this Agreement, except for emergency situations. After completing the work, the applicant must submit a Form UTL 968 (attached) for approval.

This installation is subject to compliance with the Administrative Rules of Montana 18.7.201 through 18.7.232, the Utility Occupancy Guidelines, the Manual on Uniform Traffic Control Devices and the following requirements:

Additional Requirements See Attachments

This application will be considered complete when all impacts associated with the requested action have been reviewed and approved by all agencies affected by this action. The applicant is responsible for obtaining these necessary approvals.

This agreement is subject to the terms and conditions shown on Page 2.

Applicant/Utility City of Whitefish By: Craig Workman
Print Name: Craig Workman
Title: Director of Public Works

Montana Department of Transportation By: Beulah Salmon Date Approved: 10-20-16
Title: AEO
Montana Department of Transportation
UTILITY OCCUPANCY
AND LOCATION AGREEMENT

Terms and Conditions:

The City of Whitefish, hereinafter referred to as the "APPLICANT," and the Montana Department of Transportation, hereinafter referred to as the "STATE," hereby agree as follows:

1. FEE. The process fee for issuance of this agreement is ____________.

2. STATE SAVED HARMLESS FROM CLAIMS. As a consideration of being issued this agreement, the APPLICANT, its successors or assigns, agrees to protect the STATE and save it harmless from all claims, actions or damage of every kind and description which may accrue to, or be suffered by, any person or persons, corporations or property by reason of the performance of any such work, character of materials used, or manner of installations, maintenance and operation, or by the improper occupancy of said highway right-of-way, and in case any suit or action is brought against the STATE and arising out of, or by reason of, any of the above causes, the APPLICANT, its successors or assigns, will, upon notice to them of the commencement of such action, defend the same at its sole cost and expense and satisfy any judgment which may be rendered against the STATE in any such suit or action.

3. PROTECTION OF TRAFFIC. The APPLICANT shall protect the work area with traffic control devices that comply with the Manual of Uniform Traffic Control Devices. The APPLICANT may be required to submit a traffic control plan to the District Utility Engineering Specialist for approval prior to starting work. During work, the District Utility Engineering Specialist or designee may require the APPLICANT to use additional traffic control devices to protect traffic of the work area. No road closure shall occur without prior approval from the District Administrator. All workers within the right-of-way of a Federal-aid highway who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment shall wear high-visibility class 2 or 3 safety apparel. For nighttime activity, the flagger(s) shall wear class 3 safety apparel. APPLICANT shall provide flagger(s) who are currently certified by the Montana flagger training program; the ATSSA flagger program; or the Idaho, Oregon, or Washington state flagger training programs.

4. HIGHWAY AND DRAINAGE. If the work done under this agreement interferes in any way with drainage of the STATE highway affected, APPLICANT shall, at the APPLICANT’s expense, make such provisions as the STATE may direct to remedy the interference.

5. RUBBISH AND DEBRIS. Upon completion of work, all rubbish and debris shall be immediately removed and the roadway and roadside left in a neat and presentable condition satisfactory to the STATE.

6. INSPECTION. The installation shall be in compliance with the attached plan and the conditions of this agreement. The APPLICANT may be required to remove or replace the installation, at sole expense of APPLICANT, if the installation does not conform with the requirements of this agreement or the attached plan.

7. REMOVAL OF INSTALLATIONS OR STRUCTURES. Unless waived by the STATE, upon termination of this agreement, the APPLICANT shall remove the installations or structures installed under this agreement at no cost to the STATE and restore the premises to the prior existing condition, reasonable and ordinary wear and tear and damage by the elements, or by circumstances over which the APPLICANT has no control, excepted.

8. MAINTENANCE AT EXPENSE OF APPLICANT. APPLICANT shall maintain, at its sole expense, the installations and structures for which this agreement is granted, in a condition satisfactory to the STATE.

9. STATE TO BE REIMBURSED FOR REPAIRING ROADWAY. Upon being billed, APPLICANT agrees to promptly reimburse STATE for any expense incurred in repairing surface of roadway due to settlement at installation, or for any other damage to roadway as a result of the work performed under this agreement.

10. The APPLICANT shall not discharge or cause discharge of any hazardous or solid waste by the installation or operation of the facility of a STATE Right-of-Way.

11. The APPLICANT will control noxious weeds within the disturbed installation area for two (2) years.

12. In accordance with Mont. Code Ann. § 76-3-403(2), APPLICANT shall, at APPLICANT's expense, employ the services of a Montana Licensed Professional Land Surveyor to re-establish all existing survey monuments disturbed by work contemplated under this agreement.

13. The use of explosives is prohibited for the installation.

14. Any condition of this agreement shall not be waived without written approval of the appropriate District Administrator.

The average turnaround time for a completed application is 30 working days. If the proposed installation will result in significant, permanent, or long term impacts to the transportation network additional review time may be necessary.
Montana Department of Transportation

Environmental Checklist

Project Identification Number:

P5 12L+0.433 ~ 12L+0.440

Date:

Oct 15, 2016

Choose type of Environmental Checklist:

Encroachment/Occupancy (including Utility)

Location

Highway or Route:

US Hwy, 93 (N-5)

Milepost(s):

125+0.44

Physical Address:

1005 Baker Avenue

City:

Whitefish

Legal Description:

NE 1/4, SE 1/4

County:

Flathead

Towingship:

T30N

Range:

R22W

Section(s):

1

Applicant Information:

Name:

City of Whitefish

Title:

Public Works

Company/Utility:

Water

Mailing Address:

P.O. Box 158

City:

Whitefish

State:

MT

Zip:

59937

Business Phone:

863-2460

MDT Environmental Checklist Help Guide

(Click button or go to www.mdot.mt.gov/other/environmental/external/forms/ENVIRONMENTAL-CHECKLIST-HELP SHEET.PDF)

Impact Questions

Actions that qualify for Categorical Exclusion under MEPA and/or NEPA (See ARM 18.2.261 and 23 CFR 771.117)

(See ARM 18.2.261 and 23 CFR 771.117)

1. Will the proposed action impact any known historical or archaeological site(s)?
2. Will the proposed action impact any publicly owned parkland(s), recreation area(s), wildlife or waterfowl refuge(s)?
3. Will the proposed action impact prime farmlands? (If yes, attach a completed Farmland Conversion Impact Rating Ad-1005.)
   a. Will the proposed action have an impact on the human environment that may result from relocations of persons or businesses, changes in traffic patterns, changes in grade, or other types of changes?
   b. Has the proposed action received any preliminary or final approval from the local land use authority?
4. For the proposed action, is there documented controversy on environmental grounds? (For example, has the applicant received a letter of petition from an environmental organization?)
5. Will the proposed action require work in, across or adjacent to a listed or proposed Wild or Scenic River?
6. Will the proposed action require work in a Class I Air Shed or nonattainment area?
7. Will the proposed action impact air quality or increase noise, even temporarily?
8. Will the proposed action impact air quality or increase noise, even temporarily?
9. a. Is the proposed project a MS4 Area? (Billings, Bozeman, Butte, Helena, Great Falls, Kalispell, and Missoula)
   b. Will the proposed action have potential to affect water quality, wetlands, streams or other water bodies? If YES, an environment-related permit or authorization may be required.
10. Are solid or hazardous wastes or petroleum products likely to be encountered? (For example, project occurs in or adjacent to Superfund sites, known spill areas, underground storage tanks, or abandoned mines.)
   a. Are there any listed or candidate threatened or endangered species, or critical habitat in the vicinity of the proposed action?
   b. Will the proposed action adversely affect listed or candidate threatened or endangered species, or adversely modify critical habitat?
11. Will the proposed action require an environmental-related permit or authorization?
12. If the answer is "yes," please list the specific permits or authorizations.
13. a. Is the proposed action on or within approximately 1 mile of an Indian Reservation?
   b. If "yes," will a Tribal Water Permit be required?
14. Will the proposed action result in increased traffic volumes, increased wait or delays on state highways, or have adverse impacts on other forms of transportation (rail, transit or air movements)?
15. "Yes", describe the full extent of the project and any other permits, licenses or easements that may be necessary for the applicant to acquire.
Montana Department of Transportation
Environmental Checklist

16. Attach a brief description of the work to be performed, including any subsurface work.
17. Attach representative photos of the site(s) where the proposed action would be implemented. Photos are to include any structures, streams, irrigation canals, and/or potential wetlands in the project area.
18. Attach map(s) showing the location(s) of the proposed action(s): Section, Township, Range; highway or route number and approximate route post(s).

<table>
<thead>
<tr>
<th>Checklist preparer:</th>
<th>Title:</th>
<th>Date:</th>
</tr>
</thead>
</table>

Reviewed for completeness by:

MDT District Representative

Checklist Approved by:

Environmental Services Bureau
(When any of the items 1 through 15 are checked "Yes")

Transportation Planning
(When any of the items 14 or 15 are checked "Yes")
OPEN TRENCH ROADWAY CROSSINGS (FOR ROADWAYS OTHER THAN THE INTERSTATE SYSTEM)

Open cut of a roadway is permitted only when it is demonstrated to the District's satisfaction that pushing or boring is impracticable. The following are some of the requirements:

1. The open trench shall be filled, compacted and traversable by traffic before the end of the work shift unless approved by the District Administrator.

2. The District must approve a traffic control plan prior to work.

3. The District is notified 48 hours in advance of the work and a 12-hour notification is given if this date is changed.

4. Prior to removal, the asphalt shall be square cut at least 0.3 m (1 ft) beyond the edge of the trench.

5. Square cutting of the asphalt may be necessary a second time if the asphalt is undercut or damaged by the installation.

6. Sidewalks are to be sawed from joint to joint.

7. The utility company shall store the excavated material so as not to interfere with traffic (clear zone), approaches, side streets or fire hydrants.

8. All backfill shall meet the following requirements except when other methods are specified for certain types of installations such as non-shrink backfill:
   a. Backfill material shall not contain sticks, sod or deleterious material.
   b. Backfill material shall be placed in maximum 150 mm (6 in) loose thickness layers and compacted. All backfill material will be compacted.

9. Each layer of material shall be compacted using the quantity of water required to reach a minimum of 95% density of the material being compacted.

10. The Department may take soil density tests, or require the utility to provide testing (at the utility; expense) and furnish the District the results.

11. Non-shrink backfill may be required in the place of conventional compacted backfill.
12. The replacement surfacing shall have the same thickness and strength as the surfacing removed, but not less than 101.6 mm (4 in) of asphalt and 203.2 mm (8 in) of 38 mm (1 1/2 in) in diameter gravel. The gravel course can be waived when non-shrink backfill is used.

13. The gravel shall have optimum moisture and compacted to 95% proctor density or to the satisfaction of the Department.

14. The asphalt hot mix shall be placed and compacted to match the existing pavement grade so as to leave no noticeable dip or depression. Areas under traffic will be paved the same day that they are excavated, except for special cases approved by the District.

15. The Department has the right to require seal coating to restore original surface conditions.

16. A tack coat should be applied to all edges of the existing asphalt prior to patching and between lifts of asphalt.

17. The asphalt shall be replaced as soon as possible. When weather conditions do not permit, cold mix can be used and replaced with hot asphalt when available.

18. The permittee will be responsible for maintenance of the patch for 1 year from the installation date. If the permittee does not perform the repair within 30 days of notification, the Department may make the repair and charge the permittee.
NON-SHRINK BACKFILL

Non-shrink backfill may be required in place of conventional backfill methods. The placement of the material should:

- be poured to the surface,
- allowed to set a minimum of 3 hours curing time prior to allowing traffic,
- have 101.6 mm (4 in) removed prior to patching,
- be of a consistency to fill the voids without excess water, and
- Requires no tamping or vibrating.

Figure A presents the non-shrink patching formula.

NON-SHRINK PATCHING FORMULA

Figure A

<table>
<thead>
<tr>
<th>Ingredients</th>
<th>Metric</th>
<th>US Customary</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>kg/m³</td>
<td>lbs/yd³</td>
</tr>
<tr>
<td>Cement – 0.45 sack</td>
<td>25</td>
<td>42</td>
</tr>
<tr>
<td>Water – 148 L (39 gallons)*</td>
<td>193</td>
<td>325</td>
</tr>
<tr>
<td>Air (entrapped)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.5% Course Aggregate 25 mm (1 in) max. – size 5/7</td>
<td>1010</td>
<td>1700</td>
</tr>
<tr>
<td>Sand (ASTM C-33)</td>
<td>1095</td>
<td>1845</td>
</tr>
<tr>
<td>TOTAL</td>
<td>2323</td>
<td>3912</td>
</tr>
</tbody>
</table>

*Note: Start with 114 L (30 gallons) of water or less and add more if necessary.
This Agreement is subject to compliance with the provisions of the Administrative Rules of Montana 18.7.201 through 18.7.241 including but are not limited to the following conditions and requirements:

1) The State shall not be liable to the general public for any injury to or death of any person whomsoever belonging when such injury, death, loss or damage arises out of or results from the construction, maintenance, or repair of existing or future utility facilities located within the highway right-of-way, or the installation or operation of such utility facilities within the highway right-of-way, regardless of whether or not the Montana Department of Transportation (MDT) has expressed or implied approval of the construction, maintenance, repair, installation or operation of such facilities within the highway right-of-way.

2) If any work under this agreement interferes with the drainage of the area affected, the utility agrees to resolve the problem at its own expense.

3) Any Montana Department of Transportation (MDT) signs, etc., that are removed to allow the utility's installation shall be replaced on the same day as per MDT specifications.

4) All closures, markers or other identification are to be placed near the outer edge of the right-of-way or next to the right-of-way fence.

5) All areas that are excavated will be recompacted, and disturbed areas will be restored to their original condition.

6) Requirements:

(A) Overhead Installations

(1) Vertical clearance shall meet the standards of the National Electrical Safety Codes.

(2) Location will be at or near right-of-way line. In urban areas, the facilities will be located as far as practicable from the edge of pavement. On curbed sections, the facilities shall be located at a maximum distance behind the face of curb.

In rural areas, the facility shall be 30' from the outer edge of the outside travel lane on paved sections or 42' from the centerline of the road on unpaved sections, or "CLEAR ZONE" as defined by the 1989 edition of the AASHTO publication "ROADSIDE DESIGN GUIDE," whichever is greater.

Where the safety of the motorist is provided by guard rails, other protective devices or structures, the facility may be located behind such guardrail or other protective device.

In timbered areas, the District Administrator/Engineer or his/her representative may waive the distance requirements to eliminate unwanted timber cutting.

(3) All downguys installed on new or added to existing structures not in parallel with the roadway must have the location called out on the permit. If the anchor is allowed within the 30' clear zone, it must be constructed, located, or protected such that it will not be a roadside hazard.

(B) Underground Pipeline Installations

(1) Must conform to all applicable National and State Codes. Longitudinal location will be as close to the R/W line as practicable.

(2) Bored and Pushed Crossings:

(a) Will be 30" below adjacent ditches or ground line (42" if reasonably possible).

(b) No push pits may be located closer than 10' from edge of asphalt.

(3) Open Trenching: On existing highways, open trenching requires a special traffic control
plan. Open trenching will be considered only when pushing and boring fails.

(C) Underground Cable

(1) **Vertical Depth**: Per N.E.S.C. - Minimum Electrical 30' - Communications 24'' (30'' if reasonably possible). All crossings shall be 42'' below adjacent ditches or ground line if reasonably possible.

(2) **Location**:

(a) First cable should be located within 5' of unoccupied R/W from the R/W line, if practicable.

(b) Any additional cable should be located 3' or less from existing cable, if practicable.

(c) All crossings will be as near as possible to right angles.

(d) No underground longitudinal occupancy under any pavement or surfacing courses will be permitted. However, installations in curbed sections or built-up areas, **may** be permitted at the discretion of the District Administrator/Engineer or his/her designee provided there are no border strips available for the installation.

(e) For hardship cases, refer to Administrative Rules of Montana 18.7.224.

(D) Fiber Optic Cables

(1) Fiber optic cables shall be buried a minimum of 42'' below the ground line. The District Administrator/Engineer or his/her designee may approve a lesser depth caused by placement problems such as solid rock or other barriers.

(2) The cable shall have a metallic location tape placed above the cable.

(3) Above ground markings shall be located at 500' intervals.

7) Any approvals under the terms of this agreement are granted with the understanding the installation is made according to your plans as submitted. Field revisions may be only with approved modification of this agreement and the attached Exhibit "A". If the installation is not made as shown on the plans or approved amendment(s), the Montana Department of Transportation, at its discretion, may require the removal of the facility.
Work within MDT
Right-of-way

Existing Curb Line

MDT R-O-W Line

AKERS LANE

LOT 17

LOT 18

PLAN

PROFILE

City Council Packet October 2, 2017   Page 195 of 446
Driveway Approach Application and Permit

**APPLICANT (PROPERTY OWNER)**

- **Name:** City Of Whitesfish
- **Phone/Fax Number:** (406)863-2460
- **Address:** PO Box 158
- **City:** Whitefish
- **State:** MT
- **Zip Code:** 59937
- **E-mail:** cworkman@cityofwhitesfish.org

An environmental checklist must be filled out, signed and attached in order for this application to be considered complete.

**Location**

- **City or Town:** Whitefish (45 mph speed limit)
- **Street Name:** Ackers Lane (new City Street)

**Surfacing**

- **Asphalt**

**Approach**

- **Estimated number of trips per day:** see TIS
- **Width:** as per plans

**Other Comments**

This permit is for a new City Street (Akers Lane) which is being constructed in conjunction with the development of Riverview Meadows Subdivision. The Developer of the subdivision is responsible for construction of the access as per the plans by TD&H that were approved through the MDT SIAP review.
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State of Montana
Montana Department of Transportation
Driveway Approach Application and Permit

(INSTRUCTIONS CONCERNING USE OF THIS FORM)

Applicant will complete and deliver this form in duplicate to the District Administrator serving the area in which the Approach Permit is requested.

The District Administrator, in conjunction with the District Traffic Engineer, is delegated authority to approve curb cuts, public and private approaches serving businesses, residences and agricultural uses in rural or urban areas without further consultation if the traffic conditions are not congested. In congested areas, usually urban situations, the District Administrator and District Traffic Engineer can request the Traffic and Safety Engineer in Helena for additional technical assistance. If this is necessary, the approach should be scaled onto existing plan and profile sheets showing the highway right-of-way and sent to Helena.

- APPROACH PERMIT -

Subject to the following terms and conditions, the permit applied for upon the reverse side hereof, is hereby granted:

1) TERM. This permit shall be in full force and effect from the date hereof until revoked as herein provided.
2) REVOCATION. This permit may be revoked by State upon giving thirty (30) days notice to Permittee by ordinary mail, directed to the address shown in the application hereon attached, but the State reserves the right to revoke this permit without giving said notice in the event Permittee breaks any of the conditions or terms set forth herein.
3) COMMENCEMENT OF WORK. No work shall be commenced until Permittee notifies the Department of Transportation when work is proposed to commence.
4) CHANGES IN HIGHWAY. If the State changes the highway, or there are other changes to adjoining streets, alleys, etc., which necessitate alterations in structures or installations installed under this permit, Permittee shall make the necessary alterations at Permittee's sole expense or in accordance with a separate agreement.
5) STATE SAVES HARMLESS FROM CLAIMS. In accepting this permit the Permittee, its/her successors or assigns, agree to protect the State and save it harmless from all claims, actions or damage of every kind and description which may accrue to, or be suffered by, any person or persons, corporations or property by reason of the performance of any such work, character of materials used, or manner of installations, maintenance and operation, or by the improper occupancy of said highway right of way, and in case any suit or action is brought against the State and arising out of, or by reason of, any of the above causes, the Permittee, its/her successors or assigns, will upon notice to it/him of the commencement of such action, defend the same at its/his sole cost and expense and satisfy any judgment which may be rendered against the State in any such suit or action.
6) PROTECTION OF TRAFFIC. Submit a traffic control plan for review and approval prior to any work being performed in MDT Right-of-Way. Traffic control must meet current MUTCD and MDT standards and guidance. The approval shall in no way operate to relieve or discharge the Permittee from any of the obligations assumed by acceptance of this permit, and especially those set forth under Section 6 thereof.
7) HIGHWAY DRAINAGE. If the work done under this permit interferes in any way with the drainage of the State Highway affected, Permittee shall, at its/his own expense, make such provisions as the State may direct to take care of said drainage.
8) RUBBISH AND DEBRIS. Permittee is responsible for debris that is carried onto the roadway by this construction with sweeping and cleaning done daily at Permittee's expense. Upon completion of work contemplated under this permit, all rubbish and debris shall be immediately removed and the roadway and the roadside left in a neat and presentable condition satisfactory to the State.
9) WORK TO BE SUPERVISED BY STATE. All work contemplated under this permit shall be done under the supervision of and to the satisfaction of the authorized representative of the State, and the State hereby reserves the right to order the change of location or removal of any structure or installation authorized by this permit at any time, said changes or removal to be made at the sole expense of the permittee.
10) STATE'S RIGHT NOT TO BE INTERFERED WITH. All such changes, reconstructing or relocation shall be done by Permittee, in such a manner as will cause the least interference with any of the State's work, and the State shall in no way be liable for any damage to the Permittee by reason of any such work by the State, its agents, contractors or representatives, or by the exercise of any rights by the State upon the highways by the installations or structures placed under this permit.
11) REMOVAL OF INSTALLATIONS OR STRUCTURES. Unless waived by the State, upon termination of this permit, the Permittee shall remove the Installations or structures contemplated by this permit and restore the premises to the condition existing at the time of entering upon the same under this permit, reasonable and ordinary wear and tear and damage by the elements, or by circumstances over which the Permittee has no control, excepted.
12) MAINTENANCE AT EXPENSE OF PERMITTEE. Permittee shall maintain, at its/his sole expense the Installations and structures for which this permit is granted, in a condition satisfactory to the State.
13) STATE NOT LIABLE FOR DAMAGE TO INSTALLATIONS. In accepting this permit the Permittee agrees that any damage or injury done to said Installations or structures by a contractor working for the State, or by any State employee engaged in construction, alteration, repair, maintenance or improvement of the State Highway, shall be at the sole expense of the Permittee.
14) STATE TO BE REIMBURSED FOR REPAIRING ROADWAY. Upon being billed therefor Permittee agrees to promptly reimburse State for any expense incurred in repairing surface or roadway due to settlement, or for any other damage to roadway as a result of the work performed under this permit.
15) OTHER CONDITIONS AND/OR REMARKS.
   a. All approach side slopes will preferably be constructed on 10 to 1 slope but not less than 6 to 1 slope, unless otherwise approved.
   b. No private signs or devices etc., will be constructed or installed within the highway right-of-way limits.
   c. This permit is valid only if approach construction is completed within specified months from date of issue. 6 Months
   d. Prior to starting work, for construction inspection and approval of completed approach contact Dennis Oliver (406-751-2102)
   e. [ ] See attached addendum

Dated at: Whitefish Agreement Date 8/29/2017

The undersigned, the "Permittee" mentioned in the foregoing instrument, hereby accepts this permit, together with all of the terms and conditions set forth therein.

Signed by Permittee

To be filled in by Department of Transportation Personnel

Completed Approach Inspection By: Date

Title:
Attachment for Akers Lane (Riverview Meadows) approach:

US 93        MP 126.42        Sta. 715+50

This attachment includes terms and conditions in addition to those listed on the back (page 2) of the approach permit form.

A. This permit is for a new City Street (Akers Lane) which is being constructed in conjunction with the development of Riverview Meadows Subdivision. The Developer of the subdivision is responsible for construction of the access as per the plans by TD&H that were approved through the MDT SIAP review.

B. If any deviation(s) from the MDT-approved plans is determined necessary at the time of construction due to unforeseen obstacles, the deviation(s) must be approved by MDT in writing before installation begins:

C. Parking is not allowed on MDT right of way. Landscaping or beautification on right of way requires a separate encroachment permit.

D. Developer will provide full time construction inspection and certification for any work the developer does in MDT right-of-way. The developer will provide construction inspection reports upon MDT request during construction and will provide all construction inspection reports upon completion of the project. The MDT Kalispell Area Office will assign staff to provide construction inspection oversight at its discretion.

E. As-built plans shall be provided for all completed work to insure construction was completed in accordance with the submitted plans.

F. Any work performed prior to MDT review and approval is subject to removal if MDT design standards and/or guidelines are not met.

G. MDT design reviews are made to insure compatibility with existing facilities and design standards and guidelines. The developer is responsible for all survey and plan errors and/or omissions that impact the constructability or intended design function of the project.

H. The developer must obtain approvals from downstream landowners if their proposed facility impacts downstream properties (easements, etc.) and provide documentation of appropriate coordination with affected landowners. If any streams, canals, or wetlands will be impacted as a result of this project, the appropriate water quality permits must be obtained from state, federal, tribal, and/or local agencies.

I. The developer is solely responsible for any environmental impacts incurred as a result of this project and is solely responsible for obtaining any necessary environmental permits, notifications, and/or any other necessary environmental clearances.

Permittee Initial:  

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**Montana Department of Transportation**

**Environmental Checklist**

<table>
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<tr>
<th>Control Number/UPN</th>
<th>Project Identification Number</th>
<th>Name/Location Description</th>
<th>Route/Corridor</th>
<th>Federal Funds Involved?</th>
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**Location**

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<td></td>
<td>Company/Utility: Roads</td>
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**MDT Environmental Checklist Help Guide**

(Click button or go to www.mdt.mt.gov/others/environmental/external/forms/ENVIRONMENTAL-CHECKLIST-HELPESHEET.PDF)

**Impact Questions**

**Actions that qualify for Categorical Exclusion under MEPA and/or NEPA (See ARM 18.2.261 and 23 CFR 771.117)**

1. Will the proposed action impact any known historical or archaeological site(s)?
   - Yes [ ] No [ ]
2. Will the proposed action impact any publicly owned parkland(s), recreation area(s), wildlife or waterfowl refuge(s)?
   - Yes [ ] No [ ]
   - Yes [ ] No [ ]
4. a. Will the proposed action have an impact on the human environment that may result from relocations of persons or businesses, changes in traffic patterns, changes in grade, or other types of changes?
   - Yes [ ] No [ ]
   b. Has the proposed action received any preliminary or final approval from the local land use authority?
   - Yes [ ] No [ ]
5. For the proposed action, is there any documented controversy on environmental grounds? (If no, has the applicant received a letter of permission from an environmental organization?)
   - Yes [ ] No [ ]
6. Will the proposed action require work in, across, or adjacent to a listed or proposed Wild or Scenic River?
   - Yes [ ] No [ ]
7. Will the proposed action require work in a Class I Air Shed or nonattainment area?
   - Yes [ ] No [ ]
8. Will the proposed action impact air quality or increase noise, even temporarily?
   - Yes [ ] No [ ]
9. a. Is the proposed project a M54 Area? (Billings, Butte, Helena, Great Falls, Kalispell, and Missoula)
   - Yes [ ] No [ ]
   b. Will the proposed action have potential to affect water quality, wetlands, streams or other water bodies? If yes, an environmental-related permit or authorization may be required.
   - Yes [ ] No [ ]
10. Are solid or hazardous wastes or petroleum products likely to be encountered? (If yes, project occurs in or adjacent to Superfund sites, known spill areas, underground tanks, or abandoned mines)
    - Yes [ ] No [ ]
11. a. Are there any listed or candidate threatened or endangered species, critical habitat in the vicinity of the proposed action?
    - Yes [ ] No [ ]
    b. Will the proposed action adversely affect listed or candidate threatened or endangered species, or adversely modify critical habitat?
    - Yes [ ] No [ ]
12. Will the proposed action require an environmental-related permit or authorization?
    - Yes [ ] No [ ]
    - If the answer is "yes", please list the specific permits or authorizations.
13. a. Is the proposed action on or within approximately 1 mile of an Indian Reservation?
    - Yes [ ] No [ ]
    b. If "Yes", will a Tribal Water Permit be required?
    - Yes [ ] No [ ]
14. Will the proposed action result in increased traffic volumes, increased wait or delays on state highways, or adverse impacts on other forms of transportation (rail, transit or air movements)?
    - Yes [ ] No [ ]
15. Is the proposed action part of a project that may require other governmental permits, licenses or easements? If "Yes", describe the full extent of the project and any other permits, licenses or easements that may be necessary for the applicant to acquire.
    - Yes [ ] No [ ]

**Montana Department of Transportation**

2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001
Phone: (406) 444-7228
Fax: (406) 444-7245
TTY: (406) 444-1186
Montana Department of Transportation
Environmental Checklist

16. Attach a brief description of the work to be performed, including any subsurface work.

17. Attach representative photos of the site(s) where the proposed action would be implemented. Photos are to include any structures, streams, irrigation canals, and/or potential wetlands in the project area.

18. Attach map(s) showing the location(s) of the proposed action(s); Section, Township, Range; highway or route number and approximate route post(s).

Checklist preparer:
Douglas Peppmeier, PE
Title: Project Engineer

Date: May 1, 2017

Reviewed for completeness by:

Checklist Approved by:

Checklist Conditions and Required Approvals
SECTION A-A

CROSSWALK STRIPING DETAIL

1. ALL MATERIALS NOT SHOWN TO MEET STANDARD SPECIFICATION.
2. CUTTING IN NEW HOLES SHALL BE CRAFT OR CURED UNDER DRAIN HOLES MAY BE "ROUGHT-HAMMERED" IN THE FIELD.
3. CONCRETE APPLication OF PLANKS SHOWN AT EXHIBITION AS SHOWN.
4. CONCRETE BAGS SHALL BE 34"x34"x34".
5. STORM DRAIN INLET DETAIL NOT TO SCALE
6. INTERSECTIONS WITHIN 50 FT. OF CURVES SHALL BE 90°.
7. 36" IN HOLE MAY BE "ROUGHT-HAMMERED" IN THE FIELD.
8. ALL MATERIALS MAY BE "ROUGHT-HAMMERED" IN THE FIELD.
9. UNDER DRAIN HOLES TO MEET UNDER DRAIN SPECIFICATION.

SIDEWALK RAMP DETAIL

1. ALL MATERIALS NOT SHOWN TO MEET STANDARD SPECIFICATION.
2. CUTTING IN NEW HOLES SHALL BE CRAFT OR CURED UNDER DRAIN HOLES MAY BE "ROUGHT-HAMMERED" IN THE FIELD.
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9. UNDER DRAIN HOLES TO MEET UNDER DRAIN SPECIFICATION.

INLET APRON DETAIL

1. ALL MATERIALS NOT SHOWN TO MEET STANDARD SPECIFICATION.
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8. ALL MATERIALS MAY BE "ROUGHT-HAMMERED" IN THE FIELD.
9. UNDER DRAIN HOLES TO MEET UNDER DRAIN SPECIFICATION.

STORM DRAIN INLET DETAIL

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8. ALL MATERIALS MAY BE "ROUGHT-HAMMERED" IN THE FIELD.
9. UNDER DRAIN HOLES TO MEET UNDER DRAIN SPECIFICATION.

RIVERVIEW MEADOWS

1. ALL MATERIALS NOT SHOWN TO MEET STANDARD SPECIFICATION.
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9. UNDER DRAIN HOLES TO MEET UNDER DRAIN SPECIFICATION.
1. INSTALL HYDRANT WITH PLMP1'0ZI'E fAC!RN STREET !JNl.ESS OTHC'IWISE.

2. PROVIDE MECHANICAL THRU STREET THRUST DETAIL ON THE SEE SIDE AND FRONT.

3. PROVIDE HYDRANT BRIDGE PLATE OR ANCHOR DETAIL FOR HYDRANT.

4. PROVIDE MECHANICAL BRIDGE DETAIL FOR HYDRANT.

5. PROVIDE MECHANICAL BRIDGE DETAIL FOR HYDRANT.

6. PROVIDE MECHANICAL BRIDGE DETAIL FOR HYDRANT.

7. PROVIDE MECHANICAL BRIDGE DETAIL FOR HYDRANT.

8. PROVIDE MECHANICAL BRIDGE DETAIL FOR HYDRANT.

9. PROVIDE MECHANICAL BRIDGE DETAIL FOR HYDRANT.

10. PROVIDE MECHANICAL BRIDGE DETAIL FOR HYDRANT.
1. Weld two to each side of steel tube to achieve anti-wind lace plate size of 2' x 3' to waive. 
2. Place stop signs adjacent to stop bars. 
3. Place all signs at specified clearances.

**TYPICAL SIGN PLACEMENT**

**TYPICAL D-3 SIGN MOUNTING**
CERTIFICATE OF SURVEY

in SE1/4NE1/4 SEC. 1, T.30N., R.22W., P.M.M., FLATHEAD COUNTY, MONTANA

SCALE: 1" = 200'
PURPOSE: RIGHT-OF-WAY/UTILITY SITE

JOB NO.: 432704
DRAWING DATE: OCTOBER 12, 2018
COMPLETED DATE: 4/44/2019
FOR: B Johnson, LLC
OWNER: SCHUMACHER INTERESTS INC.

DESCRIPTION:

TRACT 1

The tract of land, bounded, lying and being in the Northwest Quarter of the Northwest Quarter of Section 1, Township 30 North, Range 22 West, P.M.M., FLATHEAD COUNTY, MONTANA, and more particularly described as follows to wit:

1. Commencing at the northeast corner of the Northwest Quarter of Section 1, Township 30 North, Range 22 West, P.M.M., FLATHEAD COUNTY, MONTANA, and more particularly described as follows to wit:

2. Running south along the east line of said Section 1, flathead County, Montana, to the south line of said Section 1, flathead County, Montana, a distance of 1,600 feet.

3. Running west along the south line of said Section 1, flathead County, Montana, to the west line of said Section 1, flathead County, Montana, a distance of 1,600 feet.

4. Running north along the west line of said Section 1, flathead County, Montana, to the north line of said Section 1, flathead County, Montana, a distance of 1,600 feet.

5. Running east along the north line of said Section 1, flathead County, Montana, to the northeast corner of said Section 1, flathead County, Montana.

6. Subject to and together with all appurtenances of record.

TRACT 2

The tract of land, bounded, lying and being in the Northwest Quarter of the Northwest Quarter of Section 1, Township 30 North, Range 22 West, P.M.M., FLATHEAD COUNTY, MONTANA, and more particularly described as follows to wit:

1. Commencing at the northeast corner of the Northwest Quarter of Section 1, Township 30 North, Range 22 West, P.M.M., FLATHEAD COUNTY, MONTANA, and more particularly described as follows to wit:

2. Running south along the east line of said Section 1, flathead County, Montana, to the south line of said Section 1, flathead County, Montana, a distance of 1,600 feet.

3. Running west along the south line of said Section 1, flathead County, Montana, to the west line of said Section 1, flathead County, Montana, a distance of 1,600 feet.

4. Running north along the west line of said Section 1, flathead County, Montana, to the north line of said Section 1, flathead County, Montana, a distance of 1,600 feet.

5. Running east along the north line of said Section 1, flathead County, Montana, to the northeast corner of said Section 1, flathead County, Montana.

6. Subject to and together with all appurtenances of record.

CERTIFICATE OF SURVEY No. 2053

Page 207 of 446

City Council Packet October 2, 2017
September 22, 2016

Douglas Peppmeier, PE
TD&H Engineering
450 Corporate Drive, Suite 101
Kalispell, MT 59901

RE: Riverview Meadows
Municipal Facilities Exclusion
EQ# 17-1201
City of Whitefish
Flathead County

Dear Sir

This is to certify that the information and fees received by the Department of Environmental Quality relating to this subdivision are in compliance with 76-4-127, MCA and ARM 17.36.602. Under 76-4-125(2)(d), MCA, this subdivision is not subject to review, and the plat can be filed with the county clerk and recorder.

Plans and specifications must be submitted when extensions of municipal facilities for the supply of water or disposal of sewage are proposed (76-4-111 (3), MCA). Construction of water or sewer extensions prior to DEQ, Public Water Supply Section’s approval is prohibited, and is subject to penalty as prescribed in Title 75, Chapter 6 and Title 76, Chapter 4.

Sincerely,

Barbara Kingery
Subdivision Section
(406) 444-5368
email bkingery@mt.gov

cc: City Engineer
County Sanitarian
file
MUNICIPAL FACILITIES EXCLUSION CHECKLIST
(formerly called master plan exclusion)

Below, please find the information required under § 76-4-127 MCA regarding a municipal facilities exclusion for this subdivision within a growth policy area or first-class or second-class municipality.

1. Is this subdivision exempt from the Montana Platting and Subdivision Act §76-3 MCA?
   Yes ☑ No X
   If yes, then you may not use the Municipal Facilities Exclusion for this subdivision

2. Does this subdivision affect property with a Title 76-4 Approval? Yes ______ No X
   If yes, then you may not use the Municipal Facilities Exclusion for this subdivision

3. Name of Subdivision: RIVERVIEW MEADOWS

4. Name and address of the applicant: MKAY ENTERPRISES
   P.O.BOX 997, WHITEFISH, MT 59937

5. Name and address of engineer: TD&H ENGINEERING - DOUGLAS A. PEPPMEIER
   450 CORPORATE DRIVE, SUITE 101, KALISPELL, MT 59901

6. Copy of the preliminary, final or amended plat if available and letter of approval by the governing body as defined in §76-3-103 MCA: Attached X

7. Number of parcels in the subdivision: 17

8. A copy of any applicable zoning ordinances in effect: CUP / CITY OF WHITEFISH WB-2 & WR-1

9. How construction of the sewage disposal and water supply systems or extensions will be financed (method of financing): PRIVATE PARTNERSHIP

10. Certification that the subdivision is within a jurisdictional area that has adopted a growth policy or within a first-class or second-class municipality: Attached

11. Copy of Growth Policy: On file X Attached:

12. Location of the subdivision to the city or town, vicinity map attached: Yes X No

13. Are adequate municipal facilities, as defined in §76-4-102 MCA, for the supply of water and disposal of sewage and solid waste available or will they be provided under §76-3-507, MCA Yes ☑ No X

14. Has the governing body reviewed and approved plans to ensure adequate storm water drainage
   Yes X No

15. Will an extension of the existing sewer main(s) be necessary to serve this subdivision? Yes ☑ No X

16. Will an extension of the existing water main(s) be necessary to serve this subdivision? Yes ☑ No X

17. Exclusion Checklist review fee, ($100) included: Yes ☑ No X

18. I certify that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided under §76-3-507 MCA, and I certify that the governing body has reviewed and approved plans to ensure adequate storm water drainage. I further certify that I am authorized to sign this form on behalf of the governing body.

Name CRAIG WORKMAN Signature
Dept. PUBLIC WORKS Title DIRECTOR / CITY ENGINEER
City WHITEFISH Zip 59937 Phone 406.863.2460

Please sign and send with the $100.00 review fee to:

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY
SUBDIVISION REVIEW SECTION, PERMITTING AND COMPLIANCE DIVISION
PO BOX 200901
HELENA, MT 59620
Dear Mr. Peppmeier:

I have reviewed the plans and specifications for the water and sewer extensions proposed to serve the Riverview Meadows Subdivision within the City of Whitefish, received August 24, 2016, under the seal of Douglas A. Peppmeier, license#13231PE. The entire project was reviewed under Circular Design Standards DEQ-1, 2014 Edition and Circular Design Standards DEQ-2, 2012 Edition. The City of Whitefish approval letter was received October 17, 2016.

Riverview Meadows Subdivision utilized the Municipal Facility Exclusion (MFE) method to satisfy the Sanitation in Subdivision Act requirements (approved under EQ#17-1201), which was approved on September 22, 2016. In using the MFE process, the City of Whitefish provided the storm water review.

The Riverview Meadows Subdivision water main and sewer main extension plans and specifications, received August 24, 2016, are hereby approved. One copy of the plans and specifications bearing the approval stamp of the Department of Environmental Quality is enclosed. A second set will be retained as Department Record.

In general, the water main extension consists of: approximately 1400 feet of 8-inch diameter C-900 CL150 PVC water main, five fire hydrant assemblies, six gate valves, two connections to existing water main located in both U.S. Highway 93 and Whitefish Ave, and two end caps. The fire hydrants are capable of providing over 1500 gpm fire flow at 20 psi residual pressure.

In general, the sanitary sewer extension consists of: installing approximately 1400 feet of 8-inch diameter SDR 35 gravity sewer main, ten manholes and one connection to existing manhole located within U.S. Highway 93.
Approval is given with the understanding that any deviation from the approved plans and specifications will be submitted to the Department for reappraisal and approval. The project may not be placed into service until the project engineer or designer certifies by letter to the Department that the activated portion of the project was constructed in substantial accordance with the plans and specifications approved by the Department and there are no deviations from the design standards other than those previously approved by the department. Within 90 days after the completion of construction, a complete set of certified "as-built" drawings must be signed and submitted to the department.

It is further understood that construction will be completed within three years of this date. If more than three years elapse before completing construction, plans and specifications must be resubmitted and approved before construction begins. This three-year expiration period does not extend any compliance schedule requirements pursuant to a Department enforcement action against a public water or sewage system.

Department approval of this project covers only those portions of the plans and specifications that are subject to the Department's review authority under the Public Water Supply Laws (MCA 75-6) and the Administrative Rules promulgated thereunder (ARM 17.38). This approval does not cover items found within the plans and specifications that are outside of the Department's review authority, including but not limited to: electrical work, architecture, site grading or water and sewer service connections.

Thank you for your efforts regarding this submittal. If you have any further questions, please contact me at (406) 755-8979 or egillespie@mt.gov

Sincerely,

Emily J. Gillespie, P.E.
Public Water Supply and Subdivisions Bureau

cc: Craig Workman, Whitefish Public Works
Wendee Jacobs, Flathead County Environmental Health
MDEQ Plan Review File
January 15, 2017

Chris Barnes  
Bruce Boody Landscape Architect Inc  
301 Second Street, suite 1B  
Whitefish, MT 59937  
406-862-4755

RE: Riverview Meadows Subdivision

Mail delivery has been approved for the Riverview Meadows Subdivision. Mail service will be via lock boxes (CBUs) provided by the developer located at two sites indicated on the plat.

Mail service will start only after all lock boxes are in place at the indicated locations.

If you have any questions or concerns, you may reach me at 406-862-2151

Thank you

Steve Kvapil

Postmaster  
Whitefish, MT 59937  
406-862-2151
Date: 11/28/2016

To: TD&H Engineering
   Douglas J Kauffman
   1-406-751-5246
   E-mail: www.tdhengineering.com

From: Jacob Persinger

Re: Proposed location for solid waste container for the townhouses & apartments of Phase 2 the Riverview meadows Subdivision.

The proposed location show on the phase 2 drawing for the parking lot access & dumpster location) will be suitable for front load containers. There should be suitable room for accessing the container and exiting the parking lot. If this container is going to be placed inside an enclosure, the minimum opening for the enclosure needs to be 12 feet wide.

If you have any questions please call Jake Persinger at North Valley Refuse (406) 862-4381.

Sincerely
Jake Persinger
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
RIVERVIEW MEADOWS

PHASES 1 AND 2
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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR RIVERVIEW MEADOWS PHASES 1 AND 2

This Declaration of Covenants, Conditions, Restrictions and Easements for Riverview Meadows Phases 1 and 2 is made September 5, 2017, by Mkay Enterprises, a Montana General Partnership, of P.O. Box 997, Whitefish, MT 59937 ("Declarant"). Declarant is the owner of all of the property which is subject to this Declaration.

Note to title examiners: All easements are provided for in Article VII of this declaration. Such easements may not be terminated, withdrawn or amended except upon the specific circumstances provided for in Article XVI.

Recitals:

1. Declarant is the developer of Riverview Meadows, a planned unit development consisting of two phases: Phase 1, composed of 13 Lots each with a single family residence, and Phase 2, composed of residential townhomes and apartment buildings.

2. On August 30, 2017, Declarant formed the Riverview Meadows Homeowners Association, a registered Montana Nonprofit Corporation which is presently operative and in good standing.

3. By this Declaration, Declarant wishes to formalize the covenants, conditions, restrictions and easements applicable to all of Riverview Meadows Phases 1 and 2. Declarant will formalize the covenants, conditions, and restrictions applicable only to Phase 2 at a later date via Supplemental Covenants.

NOW THEREFORE, Declarant provides as follows:

ARTICLE I
DEFINITIONS

The following terms, as used in these Covenants, are defined as follows:

Section 1.1. "Annual Assessment" means the regular Assessment levied annually pursuant to Article XI.

Section 1.2. "Articles" or "Articles of Incorporation" means the Articles of Incorporation of Riverview Meadows Homeowners Association, Inc., which have been filed with the Montana Secretary of State, as such Articles may be amended from time to time.

Section 1.3. "Assessments" means the Annual, Special and Default Assessments levied pursuant to Article XI.

Riverview Meadows Covenants, Conditions, and Restrictions – Version 1.0 dated September 5, 2017
Page 1
Section 1.4. “Association” shall mean and refer to the Riverview Meadows Homeowners Association, Inc., a Montana nonprofit corporation formed on August 30, 2017, and any successor of that entity by whatever name.

Section 1.5. “Board of Directors” or “Board” means the governing body of the Association.

Section 1.6. “Building Site” means the building envelope or area within a Lot delineating the boundaries within which a Structure or other Improvement may be located.

Section 1.7. “Bylaws” means the bylaws of the Association which establish the methods and procedures of its operation, as such bylaws may be amended from time to time.

Section 1.8. “Common Area(s)” shall mean all real property and easements for the common use and enjoyment of all Owners of the Property, governed by the Association, including but not limited to the following: private road and utility easements; property designated “Common Area” or “Open Space” on any Plat; the irrigation well and easement; sidewalks, paths, and trails; any and all other Improvements located or constructed on such Common Areas including but not limited to drainage and storm water management facilities, lighting, fencing, gates, landscaping, plantings, signage, mailbox clusters, and similar Improvements, all of which may or may not be shown on the Riverview Meadows Plat. “Common Area” excludes those common areas or common elements shared by the Owners of townhomes and/or apartments in Phase 2 as such are or will be defined and governed by later recorded Supplemental Covenants relative to Phase 2. Finally, “Common Area” includes any similar common areas that the Board may hereafter designate or annex by amending these Covenants in accordance with the provisions hereof.

Section 1.9. “Common Expenses” means (i) all expenses expressly declared in Riverview Meadows Documents to be Common Expenses shared by all Owners of the Property; (ii) all expenses incurred by the Association in administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Area including Improvements located thereon; (iii) all maintenance expenses incurred by the Association for which it has agreed to be responsible via contract; (iv) all expenses incurred by the Association in enforcing the Covenants and collecting Assessments, including legal costs and attorney’s fees; (v) all expenses incurred by the Board of Directors in operating and administering the Association which may include legal, accounting, and management fees; (vi) premiums and deductibles for the insurance carried by the Association under Article IX; (vii) the creation or supplementation of a Reserve Account as provided under Article VIII; and (viii) all other expenses lawfully determined by the Board of Directors to be allocated among the Owners to carry out the purposes of these Covenants and the duties of the Board of Directors.

Section 1.10. “Covenants” means this document entitled Declaration of Covenants, Conditions, Restrictions and Easements for Riverview Meadows Phases 1 and 2.

Section 1.11. “Declarant” means Mkay Enterprises, a Montana general partnership, or its successors or assigns, including any Successor Declarant.
Section 1.12. "Default Assessment" means any Assessment levied by the Association pursuant to Section 11.5.

Section 1.13. "Default Rate" means an annual rate of interest that is the lesser of (i) five points above the prime rate charged by the Association's bank, and (ii) the maximum rate permitted by applicable law.

Section 1.14. "Design Guidelines" or "Guidelines" means the guidelines, rules, and procedures established by the Declarant or the Association, as may be amended from time to time.

Section 1.15. "Design Review Committee" or "Committee" means the committee formed pursuant to Article IV to maintain the quality and architectural harmony of Structures and Improvements in Riverview Meadows and to ensure that Structures and Improvements comply with these Covenants.

Section 1.16. "Director" means a member of the Board.

Section 1.17. "Documents" or "Riverview Meadows Documents" means the original and subsequent recorded Plats depicting the Property, the Articles of Incorporation, the Bylaws, and these Covenants, Supplemental Covenants, Design Guidelines, Exhibits or attachments, and similar documents, all as may be amended or supplemented from time to time.

Section 1.18. "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 1.19. "First Mortgagee" means the holder of record of a First Mortgage.

Section 1.20. "Improvement(s)" means all irrigation systems, parking areas, loading areas, fences, walls, hedges, plantings, landscaping, lighting, poles, driveways, roads, ponds, trails, gates, signs, mailbox clusters, irrigation, changes in any exterior color, footprint, shape, or configuration, 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)" excludes lawn, shrub, or tree repair of a magnitude which does not change exterior appearances. "Improvement(s)" includes both original improvements, all later changes to the same, and new improvements.

Section 1.21. "Lot" means a parcel of land designated as a lot (including townhomes) on any Plat or survey depicting the Property, in whole or in part, which is subject to these Covenants. The Common Area, and the individual apartment units intended to be built on Lot 16, shall not be considered as separate Lots.
Section 1.22.  "Manager" means any person or entity retained or hired by the Board of Directors to perform certain delegated functions of the Board pursuant to these Covenants or the Bylaws.

Section 1.23.  "Member" means any person or entity holding membership in the Association pursuant to these Covenants. The terms "Member" and "Owner" are used synonymously and sometimes interchangeably.

Section 1.24.  "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 1.25.  "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 1.26.  "Motorized Vehicles" and "Junk Motorized Vehicles." The term "Motorized Vehicles" means and includes all automobiles, trucks, buses, recreational vehicles, boats, motorcycles, motor scooters, motorized dirt bikes, all-terrain vehicles, snowmobiles, and all similar self-propelled mechanisms. In addition, the term Motorized Vehicle shall specifically include those items pulled behind the foregoing self-propelled mechanisms such as trailers, campers, and the like. The term "Junk Motorized Vehicles" means Motorized Vehicles that have been abandoned, discarded, ruined, wrecked, dismantled, or rendered inoperable or incapable of being driven.

Section 1.27.  "Operations Account" means the main account into which all Assessments and fees levied pursuant to Section 8.20 are deposited to provide the Association with the funds required to pay its routine, anticipated Common Expenses and carry out its duties and powers as herein described.

Section 1.28.  "Owner" shall mean and refer to every person or entity that is a record owner of a fee, undivided fee, or interest in any Lot in Riverview Meadows. If a Lot is sold pursuant to a Contract for Deed, the record Owner who has sold the Lot under a Contract for Deed shall not be considered an Owner, but the purchaser of the Lot under a Contract for Deed shall be considered the Owner for all purposes herein. Persons or entities having an interest in a Lot merely as security for the performance of an obligation (Mortgagees or beneficiaries) are hereby excluded.

Section 1.29.  "Period of Declarant Control" means the period beginning on the date this Declaration is first recorded in the office of the Clerk and Recorder of Flathead County, Montana, and ending on the earlier of: (a) the date which is 10 years later, or (b) the date on which the Declarant has sold 90% of the Lots of Phase 1 AND 90% of the Lots of Phase 2. The period of Declarant control may be waived, released, altered, reinstated or extended, as to either Phase 1 or
Phase 2, by written agreement between the Declarant and the Association upon terms to which
they agree including any modifications to the Declarant’s Reserved Rights.

Section 1.30. “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 1.31. “Phase 1” and “Phase 2.” “Phase 1” means Lots 1-13, consisting of
single-family homes, which are subject to these Covenants as described in Section 2.2 herein.
“Phase 2” means Lots 14-16, consisting of townhomes and apartment complexes, which are
subject to these Covenants as described in Section 2.2 herein.

Section 1.32. “Plat” means any recorded engineering survey or surveys of all or a portion
of the Property, together with such other recorded diagrammatic plans and information regarding
the Property as may be required by applicable law, or as may be included in the discretion of
Owners, as each such survey may be amended and supplemented from time to time, all recorded in
the office of the Clerk and Recorder for Flathead County, Montana.

Section 1.33. “Property” or “Riverview Meadows” means all of the Lots subject to these
Covenants as described in Section 2.2 herein, and includes any parcels or Lots which may be
formally annexed thereto in the future in accordance with these Covenants.

Section 1.34. “Reserve Account” means the sub-account into which a portion of all
Assessments and fees levied pursuant to Section 8.21 are deposited to provide the Association with
the funds required to pay Common Expenses of an emergency nature, or irregular, non-routine
Common Expenses unknown or unanticipated at the time the membership approved the
Association’s annual budget.

Section 1.35. “Special Assessment” means an Assessment that is not a part of the Annual
Assessment, levied pursuant to Article 11.3.

Section 1.36. “Structure” means a house, building, townhome complex, apartment
complex, garage, shed, gazebo, pergola, green house, kennel, pen, enclosure, deck, and all other
structures of a similar type.

Section 1.37. “Successor Declarant” means any person or entity to whom Declarant
assigns any or all of its rights, obligations or interest as the Declarant herein, as permitted by
Article XVII.

Section 1.38. “Supplemental Covenants” means additional or further restrictive
covenants that may be imposed on a portion or portions of the Property from time to time.
ARTICLE II
STATEMENT OF PURPOSE, PROPERTY SUBJECT TO COVENANTS, AND IMPOSITION OF COVENANTS

Section 2.1. Statement of Purpose. The purposes of these Covenants are as follows:

(i) to create a planned residential community known as Riverview Meadows;
(ii) to preserve and enhance the property values of Riverview Meadows;
(iii) to preserve and enhance the attractive qualities and amenities of Riverview Meadows and promote a neighborhood culture of walking and bike riding;
(iv) to preserve and enhance the trees, riparian areas and natural environment of Riverview Meadows;
(v) to provide for the administration, use, and maintenance of the Common Areas and easements within the Riverview Meadows for the common benefit of all Owners;
(vi) to prevent the construction of Structures or Improvements in Riverview Meadows of unattractive or improper quality or methods of construction or with improper or unsuitable materials;
(vii) to provide an efficient means of government via the administration of a homeowners association; and
(viii) to promote the general health, safety and welfare of the Owners of Riverview Meadows.

Section 2.2. Property Subject to Covenants. The Property subject to these Covenants includes all Lots in Riverview Meadows Phases 1 and 2 located in Flathead County, Montana, legally described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of Riverview Meadows, according to the map or plat thereof on file and of record in the Flathead County Clerk and Recorder’s office.

Phase 1 comprises Lots 1 through 13. Phase 2 comprises Lots 14 through 16. For purposes of these Covenants, the Property shall be known simply as Riverview Meadows.

Section 2.3. Annexation. The Association may at any time annex additional lots, common areas or whole subdivisions adjacent to Riverview Meadows, provided that any such annexation shall be put to a full membership vote and shall pass by an affirmative two-thirds majority vote (66%) of all Owners of the Association entitled to vote, and further provided that all owners of the property proposed to be annexed unanimously consent in writing to such annexation proposal. The consent of the Riverview Meadows Owners shall be determined in the same manner as these Covenants are amended in accordance with Article XVI. Annexation shall require the newly annexed property owners to sign and record with the Flathead Clerk and Recorder’s Office a written agreement agreeing to become Members of the Association and to be bound by these Covenants as may be amended.
Section 2.4. Imposition of Covenants Running with the Land. To accomplish the purposes indicated above, the Declarant hereby declares that from the date of recording this Declaration, the Property shall constitute a planned residential community known as Riverview Meadows, and will be held, sold and conveyed subject to 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.

Section 2.5. Compliance with Covenants. Each Owner, and his family members, agents, guests, invitees, tenants, employees, and other persons under the Owner’s direct control, shall comply with and benefit from the provisions of these Covenants.

Section 2.6. Effect of Supplemental Covenants. All Supplemental Covenants, as that term is defined herein, are in addition to these Covenants, not in lieu of these Covenants. To the extent any provision contained in any Supplemental Covenants conflicts with these Covenants, these Covenants shall be given priority and supercede the Supplemental Covenants.

ARTICLE III
LOT SUBDIVISION or COMBINATION, CONSTRUCTION, AND LANDSCAPING RESTRICTIONS

Section 3.1. Subdivision. Upon recording of the Final Plat of Riverview Meadows, further subdivision of Lots 1-13 and 16 is prohibited. Lots 14 and 15 may be further subdivided into townhome Lots at Declarant’s discretion.

Section 3.2. No Joining Lots. Although common ownership of one or more contiguous Lots is permitted, no Owner of contiguous Lots shall combine or join them via boundary line adjustment or placement of any Structure straddling the common boundary line. Ownership of contiguous Lots shall not reduce the assessments or voting rights for the combined Lots.

Section 3.3. Single-Family Residential Purposes.

a. Phase 1. For Phase 1, no residence shall be erected, altered, placed or permitted to remain on any portion of any Lot other than a permanent, single-family, private dwelling, a minimum two-car garage, and other such Structures incidental to residential use and consistent with the purposes expressed in these Covenants as a whole.

b. Phase 2. For Phase 2, permanent multi-family dwellings including both townhome complexes and apartment complexes are permitted provided that each townhome or apartment unit is used solely as a single-family, private residence.

Section 3.4. General Covenant for Appearance and Cleanliness. All Structures constructed, erected, placed, and maintained on a Lot shall be in keeping with the Design Guidelines; constructed of new materials and finished in similar architectural style as the residence; maintained in good order, repair, and appearance as needed; kept clean and sanitary for residential purposes; and shall not otherwise detract from the general value and appearance of the Riverview Meadows Covenants, Conditions, and Restrictions – Version 1.0 dated September 5, 2017
Property as a whole. In the event of any casualty, the damaged Structure or Improvement shall be restored to its condition and appearance prior to the casualty within nine (9) months. In the event of an Owner’s breach of this provision, the Association may serve upon the Owner a written notice requesting the Owner to bring the Lot into compliance with the Covenants, or present to the Association a plan and timeline for compliance, within one (1) week. If the Owner fails to cure the breach or present a plan to the Association within such time period, the Association shall have the right to enter onto the Owner’s Lot, without committing trespass, and do all necessary acts to bring it into compliance. All expenses incurred by the Association in this regard shall be charged and enforced against the Owner via a Default Assessment as provided in these Covenants.

Section 3.5. Temporary Structures or Dwellings. In general, no temporary Structure or unfinished Structure including basements, tents (other than children’s or play tents), plastic garages or shelters, lean-tos, recreational vehicles, camper trailers, truck-mounted campers shall be erected, placed, or used on any Lot as a permanent or temporary dwelling. Certain temporary Structures may be permitted as necessary for the exercise by Declarant of the Special Declarant Rights, and as specifically authorized in writing by the Committee upon application by an Owner showing just cause relative to the construction of the Owner’s residence.

Section 3.6. Mobile, Pre-built, and Pre-Used Homes and Structures. No Class ‘A’ ‘B’ or ‘C’ manufactured or mobile homes, boxed, modular, metal “kit” type homes, prefabricated homes, “Factory Built” or “Pre-Built” homes, including log homes, shall be erected, installed, built, rebuilt, placed, or permitted on any Lot. No old, mobile, or previously used Structure, whether intended to be used in whole or in part as the main residence, garage, or other Structure, shall be moved or permitted upon any Lot.

Section 3.7. Building Code. All Structures and Improvements shall be constructed in accordance with all 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. Owners shall have sole responsibility for obtaining, understanding, and complying with all applicable Building Codes.

Section 3.8. Whitefish Zoning and Planning Ordinances. All Structures and Improvements shall be constructed in accordance with all applicable Whitefish Zoning and Planning Ordinances then in effect. Owners shall have sole responsibility for obtaining, understanding, and complying with all applicable ordinances.

Section 3.9. Time of Completion of Construction. Each Structure or Improvement erected, placed or permitted to remain on a Lot shall be fully completed externally, including all excavation, site work, framing, roofing, siding, doors, windows, plumbing, and installation of utilities within one (1) year from the date such construction commences.

Section 3.10. General Construction Practices Permitted/Required. An Owner of a Lot and his agents, general contractor, independent contractors, and their respective employees, successors, and assigns involved in the construction of a Structure or Improvement for, or the providing of a utility service to, the Lot, are expressly permitted to perform such activities and to
maintain upon portions of the Lot as they deem necessary, such facilities as may be reasonably required, convenient, necessary or incidental to such construction and development of the Lot. This permission specifically includes, without limiting the generality of the foregoing, maintaining storage areas, equipment and signs. At all times during construction of any Structure or Improvement on any Lot without a fully functioning toilet and septic system, the Owner shall provide and maintain on such Lot a portable toilet facility for use by workers, licensees and invitees. Likewise, the Owner is responsible for ensuring proper parking areas for workers not in or on the Common Areas, trash and debris removal, and restoration of any damaged easements or Common Areas. No construction activity shall be performed, and no construction facility shall be maintained on any portion of the Property in such a way as to unreasonably interfere with the use, enjoyment or access of any other Owner of the Property, or his tenants, guests, or invitees, of and to his respective Lot. Construction activity shall be conducted between the hours of 7:00 a.m. and 7:00 p.m. No construction activity shall be conducted outside of these hours without the prior, express, written permission of the Board.

Section 3.11. Design Guidelines. All Owners and contractors shall comply with the Design Guidelines regulating construction activities as discussed in further detail in Article IV herein. Owners are responsible for providing copies of these Covenants and the Design Guidelines to their contractor(s), and Owners are ultimately responsible for compliance therewith.

Section 3.12. Size of Residential Home. For Phase 1, each main residential home erected on a Lot shall be constructed with not less than a total 1800 square feet of “living space,” exclusive of the garage. For two-story homes, the footprint of the main floor shall not be less than 1200 square feet.

Section 3.13. Setback lines. Each Structure shall comply with the setback restrictions imposed by Whitefish Zoning and Planning Ordinances and any additional or more restrictive setback restrictions imposed by the Design Review Committee in the Owner’s final certificate of approval issued by the Committee.

Section 3.14. Fire Prevention Measures. Full fire suppression and sprinkler alarm systems shall be installed and maintained in all residential Structures constructed on Lots 4, 7, 11, 14, 15, and 16. Whenever possible, Owners are encouraged to use fire resistant materials in the construction of Structures and Improvements on their Lots.

Section 3.15. Height and Grade. Structures shall not exceed thirty-five feet (35’) in height measured from the average finished grade of the Building Site. The Building Site shall not be located on slopes that exceed 25% grade.

Section 3.16. Roofing Material. Owners shall utilize only architectural grade Class A or B roofing materials as rated by the National Fire Association. Use of metal roofing materials is generally permitted subject to Committee approval. Use of wood shake roofing materials is prohibited.
Section 3.17. Utility Service Lines. All electrical, television, natural gas, telephone, and similar utility or service line installations shall be placed underground.

Section 3.18. Water and Sanitation. Each Structure designated for human occupancy shall connect with water and sanitation facilities as are made available by the City of Whitefish Water and Wastewater Utility. No well shall be permitted on any Lot. No septic tank or septic drain field shall be permitted on any Lot. The pre-existing common irrigation well, storage tank, and infrastructure, depicted on the Plat and designated solely for Common Area irrigation, is permitted. Each Lot Owner shall be solely responsible for all costs of installation and ongoing maintenance of the service piping and related equipment, located between the City curb stop and the points of use on the Lot, as may be required to deliver water and sanitation services to each individual Lot.

Section 3.19. Excavation. No Owner shall engage in excavation on a Lot except in connection with the construction of Structures and Improvements on the Lot, and only upon the written approval by the Design Guidelines Committee as provided in these Covenants and the Design Guidelines. For purposes of this Section, “excavation” means any disturbance of the surface of the land which results in removal of earth, rock, or other substance a depth of more than 18 inches below the natural surface of the land.

Section 3.20. Fuel, Storage and Use. If use of natural gas is desired for residential use, all Owners shall connect with established natural gas service line installations located on the Property. No large propane tanks shall be permitted on any Lot. Owners may store small propane tanks for use with outdoor barbeques and may store liquid fuel in approved containers for use for lawn mowers or other devices on the Owner's Lot. Owners shall take all necessary steps to store fuel in a safe and environmentally sound manner, taking care not to spill fuel on open ground.

Section 3.21. Private Driveways. Each Lot in Phase 1 shall be limited to one (1) driveway access for ingress and egress from Bonita Circle and, for Lots 3, 4, 7, and 8, their respective shared access easements, as shown on the Plat. Driveways shall not exceed ten percent (10%) grade, and shall be a minimum width of twelve feet (12'). Driveways shall be paved prior to or within ninety (90) days of occupancy. Owners are prohibited from constructing a road or granting an easement, license, or permanent or temporary permission, providing legal or physical access to persons owning properties located outside Riverview Meadows. The maintenance, repair, and replacement costs relative to each Owner's private driveway shall be the sole responsibility of such Owner. Likewise, the two private driveway easements benefitting Lots 3 and 4 and Lots 7 and 8 respectively, shall be the sole responsibility of the two Owners of such Lots benefitted by such easement, who shall share the costs equally.

Section 3.22. House Numbers. Each main residential home shall have a house number subject to design review. All house numbers shall be visible and easily readable from the road, located either on the house or at the driveway entrance.

Section 3.23. Fencing and Walls. All fencing and walls shall be subject to design review. All fencing shall be constructed of wood and shall conform to the following placement...
guidelines: (i) shall not extend beyond a distance of ten feet (10’) from the front edge of the residence to the front lot boundary line; (ii) shall not exceed a height of six feet (6’) if placed from the front edge of the residence and extending to the rear lot boundary line; and (iii) shall not exceed a height of three (3’) feet if placed from the front edge of the residence and extending to the front lot boundary line. Retaining walls shall be constructed of stone and terraced if necessary to heights of no more than three (3’) feet. Railroad ties and concrete blocks are prohibited. Owners shall not erect fencing or walls on or across Common Areas or in a manner that in any way impedes access, use, and enjoyment of the Common Areas or the Improvements located thereon.

Section 3.24. Seeding, Planting, and Landscaping. Whenever a Structure is constructed on any Lot, the Owner shall, within six (6) months of completion, seed and plant a lawn, landscaping, trees, and similar vegetation ground cover, in keeping with these Covenants, the Design Guidelines, and the attached Approved Plant List. The Design Guidelines contain specific restrictions prohibiting disturbance of and requiring protective measures of specifically identified trees located on the Property. Generally, the existing trees and forested areas located on the Property shall not be disturbed during construction activity.

Section 3.25. Weed Control. Wild weeds and grass shall be mowed, sprayed or otherwise controlled on a regular basis to prevent them from reaching seed stage. Each Owner shall individually follow and pay the costs of implementing all weed control guidelines promulgated by Flathead County and the City of Whitefish Weed Control Advisory Committee on each Owner’s Lot. In the event of an Owner’s breach of this provision, the Association may serve upon the Owner a written notice requesting compliance with this provision. If such Owner fails to comply within one (1) week after notice has been given, the Association and any weed abatement subcontractor shall have the right to enter upon such Owner’s Lot and perform weed abatement to bring such Owner’s Lot in compliance with this provision. All costs incurred by the Association shall be charged against the Owner via a Default Assessment as provided in Section 11.5.

Section 3.26. Drainage. No Owner, or any person under the Owner’s control or direction, shall permit any work, place any landscaping, or install any other Structures or Improvements, or suffer the existence of any condition whatsoever which will alter or interfere with the drainage pattern for the Property, except for the right which is hereby reserved to Declarant to alter or change drainage patterns, and except to the extent such alteration and drainage patterns shall be approved in writing by the Declarant or the Committee.

Section 3.27. Lighting. All construction, installation, repair, replacement, or maintenance of outdoor lighting fixtures serving any Lot shall be subject to design review. Generally, lighting shall comply with the following specifications:

(i) Outdoor fixtures shall not be placed higher than the ridgeline of the structure on which they are located;
(ii) Outdoor fixtures shall be pointed down and shall emit no more light than a radius of ten (10) feet in any horizontal direction;
(iii) No mercury vapor lights, halogen lights, or "dusk to dawn" security lights shall be
permitted on a Lot or Common Area;

(iv) For general lighting needs, Owners shall install low ambient lighting and shall reduce use as activity levels decline;

(v) For security purposes, motion detector lights are permitted and encouraged;

(vi) Owners are further encouraged to read and follow any and all guidelines and recommendations published by any “Dark Skies Initiative,” such as those set forth by the International Dark-Sky Association (www.darksky.org).

ARTICLE IV
DESIGN REVIEW

Section 4.1. Design Review Approval Required. No Structure or Improvement shall be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor will any construction, repair, reconstruction, or alteration be commenced, including changes to the exterior design, color, footprint, materials, or general configuration of any Structure or Improvement, until the Owner obtains from the Design Review Committee a written, signed certificate of approval stating that the proposed project meets the Riverview Meadows Design Guidelines established by the Declarant and/or the Association, as may be amended from time to time. Improvements that are completely within a Building or Structure and typically considered “interior” may be undertaken without such approval. In any application for approval, the Owner shall follow established procedures set forth in the Design Guidelines, shall demonstrate how its proposed project meets the provisions of the Design Guidelines, and shall attach all required sketches of the proposed project in sufficient detail. If the proposed project involves installation or removal of plantings or landscaping, the Owner shall include in its application a detailed Landscape Plan and accompanying sketch. All work on new or existing Structures and Improvements shall be undertaken only in accordance with the final approved application and attachments, as may be modified by the Committee.

Section 4.2. Design Guidelines. The Design Guidelines shall be binding on all Owners, their family members, tenants, agents, and all other persons within such Owner’s direct control. The Design Guidelines may include, among other things, the following:

(i) 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 deny any application;

(ii) The requirement that Owners ensure that the contractor(s) they hire are licensed, bonded, and insured. The Design Guidelines may impose other requirements relative to contractors.

(iii) Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under the Design Guidelines;

(iv) Designation of the Building Site on a Lot, establishing the maximum developable area of the Lot;

(v) Design size, placement, materials, and features not addressed in these Covenants;

(vi) 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 benefiting the protection of the environment, aesthetics and architectural harmony of Riverview Meadows; and

(vii) General instructions for the activities of any and all contractors doing site work or construction on the Property, addressing matters such as loading areas, waste storage, trash removal, equipment and materials storage, grading, transformers and meters, and similar matters.

Section 4.3. Design Review Committee--Purpose and General Authority. There is hereby established a Design Review Committee, which shall be responsible for the administration of the Design Guidelines. The Committee will review, study and either approve or deny proposed Structures and Improvements on the Property, all in compliance with these Covenants, the Design Guidelines, and all Riverview Meadows Documents as each may be amended from time to time. The Committee may amend the Guidelines from time to time by 2/3 affirmative vote of its members, subject to the affirmative majority vote of the Board of Directors. The Committee may establish from time to time, by resolution and affirmative majority vote, additional procedures, rules, and regulations to govern its proceedings.

Section 4.4. Committee Membership. The Committee will be composed of up to three persons, who will generally be professional design consultants. The Committee may, but need not, include Declarant or any Member of Riverview Meadows Homeowners' Association. All of the Committee members 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 written notice to the Association. In that event, the Board of Directors will succeed to Declarant’s right to appoint, remove, or replace the Committee members.

Section 4.5. Committee Discretion. The Committee will exercise its best judgment to ensure that all Structures and 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 these Covenants, the Design Guidelines, and all other Riverview Meadows Documents.

Section 4.6. Binding Effect. The actions of the Committee in the exercise of its discretion by its approval or denial of applications, plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties unless appealed to the Board of Directors. A party disputing an action of the Committee may appeal the decision to the Board of Directors, in which case a decision by the Board of Directors shall be final and conclusive on all interested parties.

Section 4.7. Organization and Operation of Committee.

4.7.1. Term. The term of office of each member of the Committee, subject to Section 4.4, will be three years, commencing January 1 of each year, and continuing until a successor is appointed. Upon the death, resignation, incapacity, or temporary absence of a
member, a successor may be appointed as provided in Section 4.4 to complete the term or period of absence of the member. Members of the Committee may serve successive terms.

4.7.2. 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 chairman, or if the absence is temporary, an interim chairman.

4.7.3. 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.

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

4.7.5. 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 denial of plan and specifications by such member or consultant will be equivalent to approval or denial by the entire Committee.

Section 4.8. Operational Expenses. If the Committee engages outside consultants and other professionals to review an application, such costs shall be the sole responsibility of the Owner making the application. All other expenses of the Committee shall constitute a Common Expense and be paid by the Association. The Committee will have the right to charge a fee for each application submitted to it for review, in an amount or in accordance with a fee schedule that may be established by the Committee from time to time. Such fees shall accompany the application and be remitted to the Committee to help defray its operational expenses.

Section 4.9. Limitation of Liability. The Committee has discretion in approving or denying applications. Neither the Committee nor any individual Committee member shall be liable to any person for any official act of the Committee in connection with performance of their duties hereunder, except to the extent the Committee or any individual Committee member acted with purposeful malice or harmful intent. Approval by the Committee does not necessarily assure approval by any applicable governing body with jurisdiction over the Property. Notwithstanding Committee approval of an application, neither the Committee nor any of its members shall 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. 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 Riverview Meadows Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Association shall defend and indemnify the Committee or any individual member in any suit or proceeding which may arise by reason of the Committee’s review or decision to the same extent provided by law for the indemnification of Directors of the Board.

Section 4.10. Enforcement.

4.10.1. Inspection. Upon providing the Owner with twenty-four (24) hours written notice, any member or authorized consultant of the Committee, or any authorized officer, Director, employee or agent of the Association may enter upon any Lot at any reasonable time, without being deemed guilty of trespass, for the purpose of inspecting a Structure or Improvement on the Lot to determine whether it is in compliance with Riverview Meadows Documents and the final certificate of approval issued by the Committee.

4.10.2. Certificate of Compliance. Upon payment of a reasonable fee established form time to time by the Design Review Committee, and upon written request of any Owner or his agent, an existing or prospective Mortgagor, 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.

4.10.3. Remedies. Any breach of these Covenants, the Design Guidelines, or the Committee’s final certificate of approval, and its plans and specifications, is hereby declared to be a nuisance, and every public or private remedy permitted by law or in equity against an Owner shall apply. Without limiting the generality of the foregoing, the Committee and/or Association may enforce a breach of these Covenants, the Design Guidelines, or the Committee’s final certificate of approval, and its plans and specifications, with the following additional remedies which shall be concurrent:

(i) Fines for Violations. The Committee may adopt a schedule of fines for failure to abide by the Design Guidelines, including but not limited to fines for failure to obtain approval from the Committee, failure to abide by established procedures, and failure to pay any required fees.

(ii) Removal of Nonconforming Structures and Improvements. Upon request of the Committee and upon reasonable notice to the Owner, the Association, may enter upon any Lot at any reasonable time, without committing trespass, and remove any Structure or Improvement constructed, reconstructed, refinished, altered, or maintained in violation of these Covenants the Design Guidelines. In such event, the Owner shall be solely responsible for all expenses incurred in
connection with such removal. Upon receipt of an itemized notice of removal expenses, the Owner shall have twenty (20) days in which to remit full reimbursement payment to the Association. If the Owner fails to reimburse the Association within 20 days, the amount owing in such notice shall bear interest at the Default Rate from the date the expense was incurred by the Association through the date of reimbursement in full, and all such sums and interest shall be a Default Assessment enforceable as provided in Article XI.

Section 4.11. Continuity of Construction. All Structures and Improvements commenced on the Property shall be completed within the timeframes established by these Covenants, the Design Guidelines, or as otherwise specified in the Committee’s final certificate of approval for the proposed project. If a Structure or Improvement is commenced and construction is then abandoned for more than 90 days, or if construction is not completed within the required timeframe, then after notice and opportunity for hearing as provided in the Bylaws, the Association may impose a fine of not less than $100.00 per day (or such other reasonable amount as the Association may set) charged against the Owner of the Lot until construction is resumed, or the Structure or 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 enforceable as provided in Article XI.

Section 4.12. Exemption for Reconstruction of Common Area by Association. In the event the Common Area suffers damage or destruction requiring the Association to repair or reconstruct it in substantial compliance with Riverview Meadows Documents, the Association shall be exempt from the provisions of this Article.

ARTICLE V
PROPERTY USE RESTRICTIONS

Section 5.1. General Restriction. In general, the Property shall be used for the purposes set forth in these Covenants and in accordance with the Riverview Meadows Documents. Further, subject to the rights of reasonable contest, each Owner shall comply with all applicable laws and regulations promulgated by any and all federal, state, county, and city governing bodies with jurisdiction over the Property. To the extent these Covenants are more restrictive than such laws or regulations without violating them, these Covenants shall control.

Section 5.2. Hazardous and Toxic Waste. No Owner, or any person under the Owner’s control or direction, shall dispose, release, discharge or emit from the Property, or dispose on the Property, any material that is designated as hazardous or toxic under any federal, state or local law, ordinance, or regulation.

Section 5.3. Commercial or Business Use Restriction. Lots shall be used for residential purposes only. Subject to Section 5.4, no Lot shall be used for any commercial, business, craft, trade, manufacturing, sales, or agricultural production purpose. The following activities are prohibited: slaughterhouse, animal breeding and sales, factory operation, automobile repair.
Section 5.4. Limited Occupational Use. Notwithstanding the commercial use restriction of Section 5.3, Lots may be used for home occupations but only upon the following terms:

(i) Use of the Lot for home occupations must be clearly incidental to the use for residential purposes.

(ii) The home occupation must be conducted within the residence.

(iii) No equipment or process shall be used in the home occupation that creates noise, vibration, glare, fumes, or odors detectable to the normal senses of individuals who are not on the Lot being used, or electrical or microwave interference noticeable in television, radio or other electrical devices on other Lots or creating electrical surges;

(iv) No individuals other than the Owners and their immediate family members shall work in the home occupation on the Lot.

(v) No signs, advertising or other indication of the home occupation shall be placed anywhere on the Lot or anywhere within the Property.

(vi) No commercial or school buses or logging trucks or tractors with semitrailers shall be parked or stored anywhere within the Property.

(vii) Notwithstanding the foregoing, the following activities are prohibited: slaughterhouse, animal breeding and sales, factory operation, automobile repair business, shipping and storage, or any other commercial activity which would cause excessive noise, odor, or traffic other than the uses allowed in these Covenants.

Section 5.5. Animals. The following provisions apply to the keeping and care of animals on any Lot.

(i) Household Pets. The care and keeping of Household Pets is permitted. Household Pets are defined as dogs, cats, guinea pigs, indoor birds, fish, and all other animals of similar size typically considered domesticated. Livestock, chickens, and similar animals are not Household Pets and are prohibited. Each Owner shall limit the number of Household Pets kept on their Lot to no more than two (2).
(ii) **Restriction on Commercial Use of Animals.** No animal shall be kept on a Lot for any commercial or business purpose, including kenneling, breeding, or boarding. If an Owner permits their dogs to have more than one litter per year, then the Owner shall be considered to be operating a commercial kennel or breeding operation in violation of these Covenants.

(iii) **Containment.** All Household Pets shall be kept on their Owner’s Lot under control of the Owner or immediate family members, and shall not be permitted to run at large at any time. All household pets shall be restrained within a fence, or by direct control by leash, tether or other constraint. All fencing, pens, and enclosures for Household Pets shall be constructed and maintained in conformity with these Covenants and the Design Guidelines or any variance permitted by the Committee, shall be of good quality and appearance, and shall be maintained in a clean and sanitary condition at all times.

(iv) **Pet Waste and Behavior.** Each Owner shall immediately remove and dispose of, in a sanitary manner, all solid waste created by their animals in any area of the Property, especially the Common Areas. No animal may be kept on any Lot if it is unmanageable, dangerous, or poses a clear threat of harm. No animal may be kept on any Lot if its behavior creates a nuisance to neighbors or the community. If an animal engages in any annoying activity, such as excessive barking, biting, harassing persons in the community, chasing vehicles, eating or disturbing garbage, destroying vegetation or any other obnoxious activity, any Owner or the Association may give the Owner of such animal ten (10) days written notice to restrain the animal from the activity. In such case, the Owner shall restrain their animal within a fence, by tether or leash or keep the animal inside their residence. If the Owner then fails to comply, any other Owner or the Association may resort to any legal means to which it is entitled to enforce these Covenants or have the animal removed by law enforcement authority.

(v) **Ordinances.** To the extent that the substantive regulations of Flathead County animal control ordinances are more restrictive, they shall apply and control.

**Section 5.6. Wildlife Attractants.** Any feeding of wildlife, including the use of salt blocks, is prohibited. To the extent that the substantive laws and regulations concerning wildlife feeding of any governmental authority having jurisdiction over the Property are supplementary or more restrictive, they shall apply and control. This provision shall not prohibit bird feeders, provided they are placed high and out of reach of wildlife. All outdoor garbage containers shall be bear proof. Owners shall take care to have no outside food storage, to keep barbeques and outdoor cooking areas clean and free from leftover food or cooking oils, and to keep pet foods in bear proof containers.

**Section 5.7. Hunting and Wild Game.** Hunting or shooting of any game animal within the Property is prohibited. No owner shall hang any wild game, game pans, carcasses or hides outside. If any such game or game parts are hung in a garage, shed, or similar Structure, the...
Structure shall be bear proof with a secure, solid-core wooden or steel door. Owners shall promptly dispose of bones, hides, scraps and any other unused game parts immediately.

Section 5.8. Firearms. No Owner shall engage in target practice or discharge a firearm at any time within or into the Property, except in self-defense or defense of property as permitted by law.

Section 5.9. Burning. Burning of slash piles and debris on a Lot is prohibited. Outdoor barbecues and campfires are permitted on a Lot subject to any seasonal or year-round wildfire prevention regulations or recommendations of any fire district or other applicable governing body. No barbeque or campfire shall be left unattended.

Section 5.10. Trash. No Owner, or any person under the Owner’s control or direction, shall deposit, throw, dump, or burn trash, ashes, garbage, discarded or unused construction materials, or any other refuse of whatsoever kind (“Trash”) on any Lot or Common Area within the Property. Each Owner shall use bear-proof trash receptacles for the temporary storage and collection of Trash on his Lot, and all such receptacles shall be in a good, secure condition, have a firmly secured lid, and shall adequately protect from wind, wildlife, or other disturbance. Trash receptacles and all other waste, pending removal, shall be completely screened from public view and kept in a manner not threatening to views, general appearance, or health of the Property. Owners shall dispose of Trash at least twice a month. On days of Trash pickup and disposal, Owners shall not place Trash or Trash receptacles on any roadway in such a manner as to obstruct its use and enjoyment by other Owners, cause harm to snow plowing equipment, or otherwise frustrate snow plowing efforts. Trash receptacles shall be removed from the Common Area road within twenty-four (24) hours of pickup.

Section 5.11. Signs. No Owner shall display to public view any sign of any kind on any portion of his Lot except a sign utilized by a contractor during construction, or a sign for the sale of a Lot. All signs shall be removed within thirty (30) days of the completion of construction or sale of a Lot. No signs shall be placed on any portion of the Common Area, including the entryway to Riverview Meadows, absent the prior written consent of the Board of Directors. The Board of Directors shall be permitted to display permanent signs concerning the Property including but not limited to the following: speed limit, parking, warnings or hazards, directions, and permitted or prohibited uses of the Common Areas.

Section 5.12. Restriction on Motorcycles and Off-road Motorized Vehicles. No snowmobiles, ATV’s, dirt bikes, or similar off-road Motorized Vehicles shall be allowed to operate on any Lot, Common Area, or trails on the Property, except for emergency purposes. Motorcycles may be used only for transportation to and from a residence and shall be operated in a quiet manner.

Section 5.13. Storage and Parking of Motorized Vehicles and Parts. No Motorized Vehicles or parts, including snow tires, shall be parked, stored, kept or placed on any part of any Lot except in an enclosed garage or otherwise fully screened from public view by adequate fencing. Provided however, such Motorized Vehicles may be stored or parked on a Lot within Riverview Meadows Covenants, Conditions, and Restrictions – Version 1.0 dated September 5, 2017

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public view for a period of 24 hours at any one time to facilitate loading, unloading, and cleaning. This provision shall not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing services to an Owner.

Section 5.14. Outdoor Repair of Motorized Vehicles. Any outdoor repair or work on Motorized Vehicles shall be completed within two (2) weeks and only one such vehicle shall be worked on at a time in any six-month period except in emergencies.

Section 5.15. “Junk” Motorized Vehicles. No Owner shall permit a Junk Motorized Vehicle to be stored, deposited or placed on a Lot except in an enclosed garage or fenced enclosure completely screened from public view. In the event of an Owner’s breach of this provision, the Association may serve upon the Owner or post on the offending Junk Motorized Vehicle a written notice requesting its removal. If such Junk Motorized Vehicle has not been removed within 72 hours after notice has been given, the Association shall have the right to remove the vehicle without liability, and the expense of removal shall be charged and enforced against the Owner via a Default Assessment as provided in these Covenants.

Section 5.16. Antennae, Satellites, Clotheslines, and Poles. No clotheslines, poles taller than eight (8) feet, exterior radio, television, microwave, satellite, or other antenna, dish, tower, signal capture and distribution device shall be placed on any Lot absent the prior written approval of the Committee and appropriate screening from public view. Provided however, one eighteen-inch (18”) dish antenna per Lot is permitted without prior approval, provided it is completely screened from public view with appropriate Structures or Improvements.

Section 5.17. Fertilizers and Pesticides. In general, application of fertilizers or pesticides on any part of the Property shall be in keeping with all laws and regulations of any governing body with jurisdiction over the Property. In keeping with the purpose of preserving the water quality and habitat of the Property, the Board encourages minimal application of safe fertilizers or pesticides. Compost piles shall be placed in the back of a Lot, built to be wildlife resistant, and maintained.

Section 5.18. Snow Removal from Individual Lots. In removing snow from driveways and walkways of a Lot, Owners shall not deposit or place snow on the Common Area, or in such a manner that impedes the Association’s snow removal efforts on the Common Area (i.e. creation of berms), or in such a manner that creates a hazard for drivers on the Common Area.

Section 5.19. Storm Water Drainage Restriction. For the proper functioning of the Storm Water Management Facilities, it is important that they remain free of debris. Therefore, Owners shall not place, deposit, or permit to be deposited debris of any kind (dirt, yard waste, landscape clippings etc.) on, in, or near the Storm Water Management Facilities.

Section 5.20. Rentals and Leasing. Subject to all laws and regulations of any applicable governing body, the Owner of a Lot shall have the right to rent or lease his Lot, subject to the following conditions:
(i) All rentals shall be memorialized by a written rental agreement with the tenant;
(ii) The rental agreement shall provide a term of three (3) months minimum;
(iii) Short-term rentals or vacation rentals (i.e. VRBO) are prohibited;
(iv) The rental agreement shall provide that the tenant assumes the Owner’s obligations under these Covenants, that the tenant shall comply with these Covenants, and any breach of these Covenants constitutes a breach of the rental agreement;
(v) The Owner shall attach to the rental agreement a copy of these Covenants and any Supplemental Covenants as may be amended;
(vi) Regardless of any term in the rental agreement to the contrary, the Owner shall be liable for any violation of Riverview Meadows Documents committed by the tenant, without prejudice to the Owner’s right to collect from the tenant any sums paid by the Owner on the tenant’s behalf.

Section 5.21. Nuisance. No obnoxious or offensive activities shall be carried on upon any Lot or the Common Area, nor shall anything be done or permitted thereon which will constitute a nuisance to any Owner or occupants of any Lot in the Property, or to the general public. By way of example and not as an exclusive list, the following activities shall constitute a nuisance: animals running at large, getting into trash, or barking excessively; the use or operation of motorcycles, all-terrain vehicles, snowmobiles, motorized dirt bikes, or similar mechanical devices for recreational purposes or for any purpose other than as provided herein; loud noise other than as permitted herein; discharge of firearms other than for emergency or defense of self or property.

Section 5.22. Noise and Quiet Hours. No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Lot, shall be placed or used on any portion of a Lot. The use or lighting of firecrackers, fireworks, cherry bombs, or other noise-makers is prohibited except on July Fourth and New Year's Eve, only as permitted by applicable law, on which occasions all such noisemakers shall cease at 1:00 a.m. of the following day. Owners shall observe the following Quiet Hours for the following activities:

(i) Except for construction activities (see Section 3.10) and snow removal, Owners shall not operate a lawn mower, chain saw, leaf blower, compressed air device, welder, earth drill or other noise-generating device between the hours of sunset and 8:00 a.m. the following day.
(ii) Owners shall not engage in loud parties or social activities between the hours of 10:00 p.m. and 10:00 a.m. the following day, except on Friday or Saturday evenings, when the quiet hours are shortened to 12:00 midnight to 10:00 a.m.
(iii) If noise becomes obnoxious or overly disruptive, any Owner may request that the offending Owner reduce or terminate such noise. The offending Owner shall comply with all reasonable requests to reduce or eliminate excessive evening noise.
ARTICLE VI
COMMON AREA

Section 6.1. General. The Association shall have full and exclusive responsibility for the management, control, and ongoing maintenance, replacement, and repair of the Common Area, including any Structures or Improvements located thereon, in compliance with these Covenants and all applicable laws, regulations, and ordinances promulgated by any governmental body with jurisdiction over the Property.

Section 6.2. Use of Common Area. The Common Area is designated for the common use, benefit and enjoyment of the Owners and their families, tenants, guests and invitees, and such other persons who may be lawfully permitted to use the Common Area or parts thereof.

Section 6.3. Dedication to the Public. Except for those easements expressly dedicated for public use as depicted and provided on the Riverview Meadows Plat, nothing in the Riverview Meadows Documents shall 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.

Section 6.4. Maintenance of Common Areas and Improvements. The Association shall be solely responsible for all maintenance, repair and replacement of the following: (i) Bonita Circle within the private road easement, and entry and parking lots serving Phase 2, all as depicted on the Riverview Meadows Plat; (ii) the sidewalks within the Akers Road and Whitefish Avenue city roadway easements; (iii) areas labeled “Common Area” or “Open Space” depicted on any Plat; and (iv) all Improvements located within the Common Area, whether pre-existing or constructed by the Declarant or the Association, including but not limited to the following: the common irrigation well, storage tank, and related infrastructure; drainage and storm water management facilities; mailbox clusters; lighting fixtures and components; any current or future walkways, paths, or trails; landscaping and vegetation; gates; and signage; all of which may or may not be depicted on the Riverview Meadows Plat. All such maintenance, repair, and replacement includes, but is not limited to the following: irrigation system testing and replacement, drainage facility cleaning; snow removal, laying gravel or mulch, grading, paving, filling potholes, maintaining curbs, berms, and any culverts, safety measures, paint lines and parking guides, reduction or elimination of dangerous road or walkway hazards, trash and debris removal, dust control, weed abatement, landscaping, planting, mulching, pruning, removal of dead or fallen trees and foliage, irrigation, and any and all similar maintenance. Further, the Association shall be responsible for all costs required to ensure that the designated “Common Area” or “Open Space” on the Plat complies with all applicable State, County, and local ordinances affecting water quality and riparian areas. All of the foregoing expenses shall be Common Expenses paid for by the Association. The maintenance, repair, and replacement costs relative to the Whitefish Community Pedestrian and Bike Path traversing the Common Area shall be the sole responsibility of the City of Whitefish, its successors or assigns.
Section 6.5. *Noxious Weed Abatement.* The Association shall enter into and comply with a weed abatement plan for all Common Areas pursuant to regulations and recommendations of the City of Whitefish Weed Control Advisory Committee. This expense shall be a Common Expense paid for by the Association.

Section 6.6. *Fire Prevention Measures.* The Association shall follow all fire prevention measures and maintenance required by the fire marshal or the City of Whitefish relative to the Common Area and any existing or future Structure or Improvement located thereon. Further, to mitigate wildfire damage, the Association shall implement defensible space standards as promulgated by the Montana Department of Natural Resources. These expenses shall be Common Expenses paid for by the Association.

Section 6.7. *Drainage and Storm Water Management Facilities Maintenance.* The term “Storm Water Management Facilities” shall mean and refer to all current and future storm water Improvements and drainage easements, as shown on the approved engineering plans, constructed, installed, maintained or operated in, under, or through the Property for the common benefit of the Owners. “Storm Water Management Facilities” shall include, but is not limited to, pond facilities, detention areas, open spaces, drainage swales, hydrodynamic separators, catch basins, inlets, defenders, manholes, basin outlets, storm sewer service (sump pump drains) pipes, drainage structures, accesses, detention basins, retention basins (including slope stabilization and landscaping) and all other storm water related facilities. The Association shall supervise, manage, operate, examine, inspect, preserve, repair, replace, restore and maintain all Storm Water Management Facilities located in, on, or through the Property outside City of Whitefish Rights-of-Way. The Association shall comply with the Riverview Meadows Maintenance Plan for Drainage and Storm Water Management Facilities, attached hereto as Exhibit A and by this reference incorporated herein. These expenses shall be Common Expenses paid for by the Association.

Section 6.8. *Licensed Motorists and Speed Limit.* Use of roads in the Common Areas shall be limited to only licensed drivers and licensed Motorized Vehicles. The speed limit on all roads in the Common Area shall be 10 miles per hour. The Association may, if deemed necessary, install speed bumps and similar safety measures on Common Area roads. These expenses shall be Common Expenses paid for by the Association.

Section 6.9. *Signs.* The Association may erect signs to further its purposes of safe and efficient use of the Common Areas and compliance with these Covenants. The Association will cooperate with the applicable traffic and fire control officials to post traffic control, fire lane, and parking regulation signs applicable to the Common Areas. All signs shall be of good quality and no larger, or for longer duration, than is necessary to accomplish their purpose. This expense shall be a Common Expense paid for by the Association.

Section 6.10. *Parking in Common Areas.* Parking on the Common Area roadways shall be limited to designated areas, for a period of twenty-four (24) hours, and only as needed. When parking within the designated parking lots located in Phase 2 of the Property, all Owners shall
comply with any and all posted signs and the parking rules and restrictions provided in any and all Supplemental Covenants governing Phase 2.

Section 6.11. Liability Insurance. The Association shall be responsible for purchasing and maintaining Liability Insurance insuring the Association and each Owner with respect to liability arising out of the Association’s and the Owners’ interests in the Common Areas and membership in the Association. This expense shall be a Common Expense paid for by the Association. Any other insurance policies purchased or maintained by a sub-homeowners association relative to the townhomes or the owner of an apartment complex for their sole and exclusive benefit shall be the sole, exclusive responsibility of the sub-homeowners association or Owner of the apartment complex as applicable.

Section 6.12. Property Taxes. For purposes of payment of Common Area property taxes, each Owner agrees that Flathead County and the State of Montana may allocate to each Lot a fractional, proportional share of the value of property taxes attributable to the Common Area. By accepting a deed to a Lot, each Owner agrees to this mechanism for property taxation and allocation, and agrees to pay the proportional share so allocated to the Lot irrespective of the Association’s authority to administer and maintain the Common Area.

ARTICLE VII
EASEMENTS

Section 7.1. Easements of Record. Each Lot and Unit is subject to all easements shown on the final recorded Riverview Meadows Plat and any subsequent recorded Plat depicting all or a portion of the Property, and to any and all other easements of record as of the date of recordation of these Covenants. These easements are appurtenant to and shall pass with the title to every Lot of the Property.

Section 7.2. Easements of Access, Use and Enjoyment. Perpetual, non-exclusive easements are hereby granted to each Lot for ingress, egress, use and enjoyment over, across, and along all Common Areas within the Property, as depicted on the final Riverview Meadows Plat and any subsequent Plat depicting all or a portion of the Property on record with the Flathead Clerk and Recorder’s Office. These easements are appurtenant to and shall pass with the title to every Lot or Unit of the Property, subject to the provisions set forth herein. These easements are subject to Declarant’s reserved Rights during the Period of Declarant Control and to any rules or regulations which the Association may develop from time to time. An Owner may assign its rights of access and enjoyment described herein to its tenants in accordance with and subject to these Covenants.

Section 7.3 Community Pedestrian and Bike Path Easement. A twenty foot (20’) perpetual non-exclusive easement is dedicated to the City of Whitefish and to the public for access, use, enjoyment, and continued maintenance of its Community Pedestrian and Bike Path traversing the Common Area of the Property as depicted on the final Riverview Meadows Plat. Any maintenance worker using this easement shall use its best efforts to do the following:
(i) Perform its maintenance duties without disturbing any one Owner's use and enjoyment of its Lot, or the collective Owners' use and enjoyment of the Common Area as a whole;
(ii) Perform work as expeditiously as reasonably possible; and
(iii) Restore the surrounding surface to its original condition as soon as possible after completion of the work.

Section 7.4. General Utility Easement. Each Lot and Unit is subject to a general easement upon, across, over, in, and under all or a portion of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to the common irrigation well and infrastructure, drainage and storm water management facilities, water, sewer, gas, telephone, electrical, television and any master communications system. By virtue of this general easement, the companies providing utility services have permission enter the Property at reasonable hours to install and maintain necessary equipment on the Property and to affix and maintain utility pipes, wires, circuits, conduits, storage tanks, pumps, and other equipment on, over, or under the Property. Any utility company using this general easement shall use its best efforts to do the following:

(iv) Install and maintain the utilities provided for without disturbing the Owners' use and enjoyment of their Lot, Unit, or the Common Area;
(v) Perform its work as expeditiously as reasonably possible; and
(vi) Restore the surface or Improvements to their 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 the Declarant or the Association shall have 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 these Covenants. This general easement will in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 7.5. 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 Common Areas in the lawful or proper performance of their duties.

Section 7.6. Reservation of Easements. The Declarant or the Association, acting through its Board of Directors, shall have the concurrent right to establish from time to time, by a duly recorded written instrument, such further easements, permits or licenses over the Common Area, for purposes including but not limited to: (i) utilities, paths, walkways, drainage, recreation areas, parking areas, and similar amenities in order to serve the Owners within Riverview Meadows; and (ii) for the purpose of granting access to certain persons (other than Owners and Owners' families and guests) who may be permitted to use all or portions of the Common Area, in exchange for sharing in the maintenance costs of same, all in accordance with these Covenants.

Section 7.7. Maintenance Easement. An easement is hereby granted to Declarant or the Association, through its Board of Directors, and their respective officers, agents, employees and assigns, upon, across, over, in and under the Property to perform emergency maintenance or
repairs as may be necessary or appropriate, or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to Riverview Meadows Documents.

Section 7.8. Easements Deemed Created. All conveyances of Lots hereafter made shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to these Covenants appears in the recorded instrument for such conveyance.

Section 7.9. Amending or Extinguishing Easements. The easements in this Article shall not be amended or extinguished except as permitted by law and specifically authorized and provided in Section XVI herein.

ARTICLE VIII
ASSOCIATION

Section 8.1. Membership. Membership in the Association is mandatory by virtue of owning a Lot or interest therein. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Ownership of such Lot shall be the sole determining factor for membership.

Section 8.2. Transfer of Membership. A Member shall not transfer, pledge or alienate his membership in the 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 8.3. Notice of Membership, Owner’s Registered Mailing Address, and Email. Upon the sale and purchase of a Lot, within thirty (30) days of taking title to the Lot, the new Owner shall furnish to the Association a Notice of Membership containing the following: (i) a copy of the recorded instrument, or such other evidence as may be specified by the Board under the Bylaws, vesting the person with the interest required to make him a Member; and (ii) a signed, written statement containing each Owner’s registered mailing address and current email address for use by the Association in sending its required notices and other communications. The Association will keep on file all such notices of membership. All current and future Members are solely responsible for notifying the Association of any and all changes in mailing or email addresses. If no address is registered, then the address of the Lot will be deemed the registered address.

Section 8.4. Voting Rights. Subject to Section 14.1.4 if applicable, one (1) vote shall be allocated to each Lot within the Property. When more than one Person owns an interest in any Lot, the vote for such Lot shall be exercised as such persons, collectively, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If joint owners of the same Lot vote in opposite ways, the vote attributed to their Lot shall be apportioned fractionally in proportion to the vote of the joint owners. If one joint owner of a Lot casts a vote, the entire one vote of that Lot shall be considered as cast, unless one or more additional joint owners cast a contradictory vote. The fact that two or more contiguous Lots may be owned by one person and developed with one single family residence will not affect the number of votes or the amount of
Assessments allocated to the Lots. If the Owner is required by any governmental authority or by a Mortgagee to re-plat the Lots in order to construct Improvements on them, the number of votes and the allocation of Assessments to the Lots after re-platting will be adjusted. Any Owner who has leased his Lot may execute a signed, written Assignment assigning his voting right to the tenant for the term of the lease, provided that a copy of the Assignment is furnished to the Association prior to any meeting in which the tenant exercises the voting right.

Section 8.5. Matters Reserved for Full Membership Vote. The following matters are hereby reserved for and shall require a vote of the full membership:

(i) Election or removal of any Director on the Board of Directors;
(ii) Approval of the Annual Budget;
(iii) Any Special Assessment, Common Area capital improvement, or non-budgeted, non-emergency expenditure greater than $5,000.00;
(iv) Increasing the Reserve Account cap;
(v) Borrowing money, or entering into a mortgage, pledge, or deed of trust, regarding any or all of its real or personal property as security for money borrowed or debts incurred;
(vi) Amending these Covenants;
(vii) Ratifying the Board’s amendments to the Bylaws;
(viii) Dissolving the Association; and
(ix) Annexation of neighboring Lots or Subdivisions.

All other Association matters not expressly reserved for full membership vote shall be deemed to fall within the scope of authority, powers, and duties of the Board of Directors.

Section 8.6. Annual Meeting. The Board of Directors shall call and hold an annual meeting of the Members of the Association in Whitefish, Montana, at a date, time, and place as the Board of Directors will determine. The Board of Directors will provide 30 days written notice of the annual meeting. The Notice shall include a written agenda and a written proposed, annual budget. The Board of Directors will determine the precise agenda for each annual meeting, but at a minimum it shall include the following:

(i) Roll call of Members, call to order, and determination of quorum;
(ii) Review, discussion and approval of the budget for the prior year; (This report will include at a minimum, all income and expenses itemized by category and a financial statement showing all assets and liabilities by category)
(iii) Review, discussion and approval of the itemized budget and proposed assessments for the upcoming year;
(iv) Election of Directors;
(v) Other business.

Section 8.7. Special Meetings. Special meetings may be initiated by a 2/3 majority vote of the Board of Directors and may be called at any time for the purpose of considering matters requiring the approval of Members. The Board of Directors will call a special meeting by mailing written notice to all Members at least 10 days prior to the date of the meeting.
Section 8.8. Vote Required to Act. Subject to Section 2.3 and Article XVI (annexing neighboring properties or amending these Covenants), any action concerning Association matters reserved for full membership vote shall require an affirmative simple majority vote (51%) of Members constituting a quorum. For each vote, the Board shall keep records of which Members constituted the quorum.

Section 8.9. Quorum. Subject to Section 2.3 and Article XVI (annexing neighboring properties or amending these Covenants), a quorum shall be a representation of one-third (33%) of the Lots of which the Owners are in good standing in the Association and entitled to vote. For purposes of determining a quorum, Members may be present in person, by written proxy, or telephonically. Once established, a quorum is not lost by Members departing the meeting.

Section 8.10. Proxies. Any Member may appoint another person to vote on any or all issues by written proxy. No official form is required, provided that the proxy clearly state whether it is limited or unlimited, and provided that it is dated and signed by all Members of a particular Lot. The presiding officer may accept a photocopy or electronic copy of a proxy, provided that the original, signed proxy must be delivered and maintained in the permanent records of the Association.

Section 8.11. Ballot and Action with or without a meeting. Every proposed action put to a full membership vote requires a written ballot clearly stating the proposed action to be taken and two clear choices: “yes” or “no.” A vote may be conducted without a meeting by sending written ballots via mail, email or similar electronic means provided that sufficient ballots are returned representing a quorum. If sufficient ballots are not returned representing a quorum, the Board may schedule a meeting and re-submit the vote to the full membership.

Section 8.12. Minutes. The secretary will keep minutes for each meeting summarizing, at a minimum, the following:

(i) Election of directors;
(ii) Budget and assessments for the following year;
(iii) All other decisions which passed or failed a vote of the Members; and
(iv) Unfinished business or tabled motions, if any.

Within 10 days of any meeting, the secretary will mail or email a copy of the minutes to each Member.

Section 8.13. Association Authority, Powers, and Duties. The Association does not contemplate pecuniary gain or profit to its Members. The Association shall maintain its nonprofit corporation status with the State of Montana. The authority, powers, and duties of the Association are as follows:

(i) To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in these Covenants and recorded in the

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Section 8.16. **Officers.** The Association shall have a President, Vice-President, and combined Secretary/Treasurer, whose respective duties, term, removal and replacement shall be as provided in the Association’s By-laws. As determined by resolution of the Board of Directors, these Officer positions may be elected and filled by the acting Directors, or they may be elected and filled by and from the membership as a whole in addition to the Board of Directors.

Section 8.17. **Manager.** The Association may hire or contract for the services of a Manager to act for the Association, the Board of Directors, or the Officers, as such may be further provided or limited in the Bylaws. Any such employment contract shall be in writing, shall specify that such Manager is subject to and bound by these Covenants and the Bylaws, and shall require the Manager to indemnify the Owners and the Association for any negligence in the performance of his/her duties under the contract. No Director or Officer of the Association shall 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 an Owner or a person related to Owners. 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 duties and obligations under Riverview Meadows Documents.

Section 8.18. **Committees.** The Association may delegate any of its rights, duties or responsibilities to any permanent or temporary committee that the Board may choose to create, provided that the Board shall not be relieved of oversight of any committee or of its duties and obligations under Riverview Meadows Documents.

Section 8.19. **Address of Association.** All notices, demands, and other communication intended to be served upon the Board of Directors shall be sent to the address of Association or such other address as the Board may designate from time to time by a notice delivered to all Owners.

Section 8.20. **Books and Records.** The Association shall make available for inspection by Owners and Mortgagees, upon request, during normal business hours or under other reasonable circumstances, current copies of Riverview Meadows Documents, and the books, minutes, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 8.21. **Operations Account.** The Association shall establish and maintain an Operations Account into which that portion of Annual and Special Assessments shall be deposited specifically earmarked for the payment of routine, ordinary, expected Common Expenses as may be set forth and approved in the annual budget or a special assessment. The Association shall pay its regular, ordinary, expected Common Expenses from this account.

Section 8.22. **Reserve Account.** The Association shall establish and maintain a Reserve Account into which a portion of Annual Assessments shall be deposited specifically earmarked for the creation of a Reserve Account pursuant to this section. The purpose of the Reserve Account is to establish reserve funds for payment of non-routine, extraordinary, unexpected, or emergency...
expense which, due to the timing of such expense, was not considered in the annual budget for purposes of calculating the Annual Assessment. The Board of Directors shall have full discretion to determine what portion of Annual Assessment, spread over a number of years, should be charged and allocated to the Reserve Account to eventually reach a cap of $7,000.00. In no event shall the Reserve Account exceed $7,000.00 plus interest generated. However, upon depletion of all or a portion of the Reserve Account for payment of non-routine, extraordinary expenses, the Board of Directors shall again charge and allocate a portion of the Annual Assessment for the purpose of restoring the Reserve Account to its $7,000.00 cap. The Board of Directors shall have the right to increase the cap of the Reserve Account provided such decision is ratified by an affirmative majority vote of the full membership.

ARTICLE IX
INSURANCE

Section 9.1. Authority to Purchase. All insurance policies relating to the Common Area, shall be purchased in the name of the Association by the Board of Directors or its duly authorized agent. The Board of Directors, any Manager, and the Owners shall 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 9.2. Physical Damage Insurance on Common Area. The Association shall obtain insurance for such insurable Structures or Improvements located in or on the Common Area, and with such coverages, limits, deductibles and other terms and conditions as the Board may determine from time to time.

Section 9.3. Liability Insurance. The Association shall obtain a comprehensive policy of public liability insurance and property damage insurance on the Common Areas insuring against liability for injury to persons or property occurring on or about the Common Areas, or arising out of the ownership, use or management of the Common Area and Structures and Improvements located thereon, with such coverages, limits, deductibles, and other terms and conditions as the Board may determine from time to time. The insurance policy shall name as the insureds the Association, the Board of Directors, any Manager, and the respective employees, agents, and all persons acting as agents thereof. Owners shall be named as additional insureds, but only for claims and liabilities arising in connection with the ownership, use or management of the Common Area and Structures and Improvements located thereon. The Board of Directors shall 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 Riverview Meadows, 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 9.4. Fidelity Insurance. At the sole discretion of the Board, and at reasonable cost, the Association may purchase Fidelity bonds or insurance coverage insuring against dishonest acts on the part of its Directors, officers, trustees, and employees, and on the part of all others who handle or are responsible for handling the funds of the Association. In addition, if
responsibility for handling funds is delegated to a Manager, such bonds or insurance coverage shall be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity bonds or insurance coverage will name the Association as an obligee or insured and will be written in such amount as the Board may determine reasonable and appropriate.

Section 9.5. Provisions Common to Physical Damage Insurance, Liability Insurance, and Fidelity Insurance. Any insurance coverage obtained by Riverview Meadows Homeowners Association under the provisions of this Article above will be subject to the following provisions and limitations:

(i) At its sole discretion, the Board of Directors may pay the deductible, if any, for any insurance policy purchased 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 from the Reserve Account.

(ii) The Association shall be the named insured under any such policies as attorney-in-fact for the Owners, and the Association shall have exclusive authority to negotiate losses under such policies.

(iii) Each Owner shall be an insured person with respect to liability arising out of the Owner's interest in the Common Area or membership in the Association.

(iv) The policies will contain a waiver by the insurer of any right to claim by way of subrogation against Owners, the Board of Directors, the Association, the Manager, and any Owner and their respective agent, employees, or tenants, and in the case of the Owners, members of their households.

Section 9.6. Personal Liability Insurance of Directors and Officers. At reasonable cost, the Association shall purchase appropriate directors' and officers' personal liability insurance insuring its directors and officers from personal liability in relation to the performance of their duties and responsibilities in acting as directors and officers for the Association pursuant to these Covenants.

Section 9.7. Other Insurance. The Association may obtain other types of insurance against such other risks as it determines is appropriate with respect to the stated purposes of these Covenants and the powers, duties, and obligations of the Association and the Board of Directors set forth therein.

Section 9.8. Insurance Obtained by Owners. Each Owner will have the right to obtain insurance for such Owner's benefit, at such sole Owner's expense, covering the Owner's Lot, Structures, Improvements, personal property and personal liability. However, no insurance coverage obtained by an Owner shall operate to decrease the amount which the Association may recover under any policy maintained by the Association, cause the diminution or termination of such coverage, or otherwise affect any insurance coverage obtained by the Association. Any such
insurance obtained by an Owner will include a waiver of the particular insurance company’s right of subrogation against other Owners, the Board of Directors, the Association, and any Manager.

ARTICLE X
DAMAGE OR DESTRUCTION OF COMMON AREA

Section 10.1. 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 Association shall 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 Common Area to substantially the same operable condition in which it existed prior to the damage or destruction.

Section 10.2. Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently complete the repair and reconstruction of the Common Area damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be required. Assessments will not be abated during the period of insurance adjustments and repair and reconstruction.

Section 10.3. Funds for Repair and Reconstruction. The proceeds received by the Association from insurance, if any, shall be used first to pay the costs of repair and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Section 11.3, 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. In addition, or in lieu thereof, if such cost of repair and reconstruction qualifies as non-routine, unexpected, extraordinary, or an emergency, the Association may access funds from the Reserve Account to pay it. Further assessments may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall first be deposited into the Association’s Reserve Account to restore it to its cap of $7,000.00, and any remainder shall be directly distributed to the Owners on a pro rata basis.

Section 10.4. Decision Not to Rebuild. If by affirmative majority vote of the full membership Owners agree in writing not to repair and reconstruct damage to the Common Area, and no alternative Improvements are authorized, then the Association shall restore such damaged portion of the Common Area to its natural, undeveloped state and maintained in a neat and attractive condition, and the balance of insurance proceeds shall first be deposited into the Association’s Reserve Account to restore it to its cap of $7,000.00, with any remainder directly distributed to the Owners on a pro rata basis.
ARTICLE XI
ASSESSMENTS

Section 11.1. Assessments. Each Owner, by accepting a deed to or a land contract for a Lot or Unit, whether or not specifically so expressed in the deed or conveying instrument, shall be deemed to covenant and agree to pay to the Association any and all Assessments established pursuant to these Covenants to provide the Association with sufficient funds to pay Common Expenses and carry out its purposes, duties, and obligations as set forth in these Covenants. Assessments shall include Annual Assessments, Special Assessments, and Default Assessments, each as further defined below.

Section 11.2. Annual Assessments.

(i) Calculation of Annual Assessments. Prior to the Annual Meeting, the Board of Directors will prepare an itemized budget for the following fiscal year. Annual Assessments shall be calculated as the sum of all estimated annual net cash flow requirements of the Association to cover annual Common Expenses divided by the total number of Lots. Common Expenses include those items defined or set forth in Section 1.9 and Article VI herein. By way of example, Common Expenses include, without limitation, the following: costs of routine maintenance, repair, management, and operation of the Common Area; compliance with all applicable State, County, and City laws or ordinances affecting water quality and weed abatement; snow removal in the Common Area; landscaping, irrigation, signage, fire prevention measures, care of grounds, and common lighting all within the Common Area; management and maintenance of Improvements within the Common Area; any common water and utility charges for the Common Area; creating or supplementing the Reserve Account; expenses and liabilities incurred by the Association in enforcing these Covenants; legal, accounting, and management fees; premiums for insurance coverage and any deductibles; expenses and liabilities incurred by the Association pursuant to any provision of these Covenants; and payment of any deficit remaining from a previous Assessment period. The omission or failure of the 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 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.

(ii) 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. 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 Riverview Meadows Property. Notwithstanding this general apportionment scheme, any Common Expense or portion thereof benefiting fewer
than all of the Lots, the Association shall have the right to apportion such Common Expense exclusively against the Lots so benefitted.

(iii) Collection and Date of Commencement of Annual Assessments. Annual Assessments will be collected in one annual lump sum, or in periodic installments as the Board may determine by resolution. The Board of Directors shall deliver a written Notice of Assessment to each Owner within 30 days of the date of the meeting at which the Assessments were approved. Payment of Assessments is due within 30 days of the date of the written Notice of Assessment.

Section 11.3. Special Assessments. 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 Common Expense, or, after adopting and submitting a revised budget to the Association, to make up any shortfall in the current year's budget. The Board shall calculate, apportion, and collect Special Assessments according to the same guidelines as set forth for Annual Assessments. The Board shall provide notice to each Owner of the amount and due date for such Special Assessments at least 30 days prior to the due date.

Section 11.4. Proration for New Owner. Upon an new Owner purchasing a Lot, liability for Annual and Special Assessments shall be prorated on a daily basis to the extent of the number of days remaining from the date of purchase in any Assessment period. Proration will be based on a 365-day year.

Section 11.5. Default Assessments. A Default Assessment charged against any one Owner shall be calculated as the sum of the following: all unpaid, past-due Assessments; all monetary fines, penalties, interest, charges, costs, or fees (excluding Annual and Special Assessments) levied against an Owner pursuant to Riverview Meadows Documents; any expense incurred by the Association which is the obligation of an Owner, or which the Association incurred on the Owner’s behalf, pursuant to Riverview Meadows Documents; and any expense (including without limitation attorneys’ and legal assistants’ fees) incurred by the Association as a result of the failure of an Owner to comply with Riverview Meadows Documents. Default Assessments shall be due and payable immediately upon receipt and shall be enforced as provided in these Covenants.

Section 11.6. Personal Obligation and Creation of Lien. Each Owner shall be personally obligated to pay all Annual, Special, and Default Assessments when due, and two or more Owners of Lot will be jointly and severally liable for such obligations. In addition, all Annual, Special, and Default Assessments shall be secured by a continuing lien on the particular Lot against which the Assessments are made until paid. The lien will secure payment of the Assessments, together with any interest, costs, and reasonable attorney’s fees incurred in collecting same. No Owner may waive or otherwise escape liability for payment of Assessments for nonuse of the Common Area and easements, or by abandonment of his Lot. An action to recover a money judgment for unpaid Assessments and related charges as listed above may be maintained without foreclosing or waiving the Assessment lien provided in these Covenants.
Section 11.7. Late Fees, Interest, and Notice of Delinquency. Any Assessment not paid when due shall be deemed delinquent. Delinquent Assessments shall incur a late fee of not less than $50.00 for the first 30-day period of delinquency, or such other amount as the Board may determine by resolution. In addition, the Board has the sole discretion to charge interest at the Default Rate on the sum of such delinquent Assessment and the late fee. Upon a determination of delinquency, the Board shall deliver a written Notice of Delinquency to each Owner affected, stating the following:

(i) the fact of delinquency;
(ii) the accrual of late fees and in what amount;
(iii) the accrual of interest and in what amount;
(iv) that if payment is not received within 30 days of the date of the Notice of Delinquency, such will constitute a Default Assessment;
(v) that a lien may be imposed on the affected Lot, and if so imposed, the Owner will be responsible for payment of all fees and costs incurred by the Association in imposing and foreclosing on the lien; and
(vi) that the Association may pursue any other action available to it under these Covenants and available at law and in equity.

Section 11.8. Remedies for Nonpayment of Assessment. If a Member has not paid the outstanding Assessments, $50.00 late fee, and any interest owed within 30 days of the Notice of Default Assessment, or in the event any other type of Default Assessment is established under these Covenants, the Association, through its Board of Directors, in its sole discretion, may take any or all of the following actions:

(i) Assess a late fee for each delinquency at uniform rates (i.e., $5.00 per day) as set by the Board of Directors by resolution from time to time;
(ii) Charge interest from the date of delinquency at the Default Rate;
(iii) Suspend the voting rights of the Owner during any period of delinquency;
(iv) Bring an action at law against any Owner personally obligated to pay the delinquent Assessment charges;
(v) File a Statement of Lien with respect to the Lot and foreclose as set forth below.

The remedies provided under these Covenants shall not be exclusive, and the Association may pursue any other remedies to collect delinquent Assessments as may be provided by law.

Section 11.9. Lien. All Annual, Special, and Default Assessments chargeable to a Lot shall constitute a lien on the Lot, effective the due date of the Assessment. To evidence the lien, the Association shall 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 Association, and all delinquent Assessment amounts then owing. Any such statement will be duly signed by an officer or director of the 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 Association may have on file for the Owner. After ten (10) days of the date of mailing or delivery of the statement of lien to the Owner, the Association may record the statement in the office of the Clerk and Recorder of Flathead County, Montana. After thirty (30) days following recording of the statement, the
Association may foreclose on the lien in the same manner as provided in the foreclosure of mortgages statutes of the State of Montana. The Association shall have the power to bid on a Lot at a foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot.

Section 11.10. Successor's Liability for Assessment. All successors to the fee simple title of a Lot, except as provided in Section 12.3, 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 Association under Section 11.13.

Section 11.11. 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:

(i) Liens and encumbrances recorded before the date of the recording of these Covenants;

(ii) 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

(iii) 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 Riverview Meadows Homeowners' Association's lien.

With respect to (iii) above, 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 foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, shall take the Lot free of any claims for unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Lot which accrued 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 (i) through (iii) above shall be deemed to consent that such lien or encumbrance is subordinate to the Association's liens for Assessments, interest, late charges, costs, expenses and attorneys' fees, as provided in these Covenants, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

Section 11.12. Reallocation of Assessments Secured by Extinguished Liens. The sale or transfer of any Lot to enforce or foreclose any of the liens to which the Association's lien for Assessments is subordinate shall extinguish the Association's lien for such Assessments only as to
such amounts which became due prior to such sale or transfer. At the Board’s sole discretion, the amount of such extinguished lien may be reallocated and assessed to all Lots as a Common Expense. 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 11.13. Statement of Status of Assessments. Upon request, the Association shall 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 Association will deliver the statement personally or by certified mail, the first class postage prepaid, return receipt requested, to the inquiring party within 14 business days after the registered agent of the Association received 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 Association, or by the Manager, shall be conclusive upon the 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.

ARTICLE XII
FIRST MORTGAGEE PROTECTIONS

Section 12.1. 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 Association.

Section 12.2. 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 12.3. 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 such statutes, such First Mortgagee will not be liable for any unpaid dues and charges attributable to the Lot which were due and payable to the date such title vests in the First Mortgagee.

ARTICLE XIII
ASSOCIATION AS ATTORNEY-IN-FACT

Each and every Owner hereby irrevocably appoints the 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 Common Area. As attorney-in-fact, the 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 Association.

ARTICLE XIV
DECLARANT’S RESERVED RIGHTS

Section 14.1. General Provisions. Until the expiration of the Period of Declarant Control, Declarant or any Successor Declarant will have the following Declarant Reserved Rights:

14.1.1. Completion of Improvements. The right to complete any Improvements as indicated on any Plat filed with respect to the Property;

14.1.2. Easements. The right to use easements through the Common Area on the Property, for the purpose of completing Structures or Improvements on the Property.

14.1.3. Association Directors and Officers. The right to appoint, remove, and replace any Board member, officer, director, or Committee member of the Association, as provided in this Declaration or the Bylaws. Each Member hereby gives Declarant an irrevocable proxy for this purpose.

14.1.4. Weighted Association Voting Rights. Declarant shall be entitled to three (3) votes for each Lot owned by Declarant.

14.1.5. Supplemental Covenants. The right to record Supplemental Covenants governing Phase 2 of the Property.

14.1.6. Amending any and all Riverview Meadows Documents. The exclusive right to amend any and all Riverview Meadows Documents, for any purpose, including but not limited to compliance with laws and regulations of any governing body, make corrections, avoid undue hardship, or exercise any of Declarant’s Reserved Rights.

Section 14.2 Supplemental Provisions Regarding Declarant’s Rights. In addition, Declarant also reserves the rights retained for the benefit of Declarant in this Article and in other provisions of these Covenants.

Section 14.3. Declarant’s Rights Incident to Construction. Declarant, for itself and its successors and its 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 invitees.
Section 14.4. **Spec home and/or Sales Office.** Declarant, for itself and its successors and assigns, hereby reserves the right to construct one or more spec homes on Phase 1, and to establish and maintain a sales office with appropriate signage for the purpose of marketing the spec home or any Lot or Unit within the Property.

Section 14.5. **Expiration of Period of Declarant Control.** Upon expiration of the Period of Declarant Control, if Declarant remains an Owner, Declarant will continue to have all the rights and duties ordinarily given to Owners under this Declaration.

Section 14.6. **Declarant’s Election to Alter/Waive Via Written Agreement.** The Period of Declarant Control may be waived, released, altered, reinstated or extended, as to either Phase 1 or Phase 2, by written agreement between the Declarant and the Association upon terms to which they agree. Likewise, Declarant, at its sole option, may waive or relinquish, on a temporary or permanent basis, any of its Reserved Rights by written agreement between the Declarant and the Association upon terms to which they agree.

**ARTICLE XV**
**ENFORCEMENT**

Section 15.1. **Who May Enforce.** The Declarant (during the Period of Declarant Control), the Association through its Board of Directors, or any Owner, shall have the right to enforce the Covenants by any remedy provided for in these Covenants, or by any proceeding at law or in equity, provided however, Declarant or the Association shall have priority to enforce breaches of these Covenants regarding the Common Area, the collection and payment of Assessments levied against a delinquent Owner, and the imposition of any lien in accordance with the procedures set forth above in Article 11.9. If in accordance with procedure the Association declines to enforce these Covenants against an Owner for whatever reason, then any other Owner, at its sole cost and expense, may enforce the Covenants.

Section 15.2. **Procedure.** The Board of Directors by resolution shall have the right to implement further guidelines and procedures regarding enforcement of these Covenants, but at a minimum, the following procedure applies. Unless an aggrieved Owner is specifically authorized by these Covenants to individually enforce a covenant against another Owner, such aggrieved Owner shall first serve a written request upon the Board detailing an alleged violation of the Covenants. Upon receipt of a written request to enforce, the Board shall have ten (10) days to serve notice upon the Owner of the alleged violation, and shall have a concurrent thirty (30) days to inspect or investigate the violation and attempt to negotiate a resolution. If negotiation fails, the Board shall have an additional thirty (30) days to mediate the dispute with a third-party mediator. If mediation fails, the Board shall have an additional thirty (30) days to implement any enforcement remedy specifically authorized in these Covenants, including an action at law or in equity. If, at any time, the Board fails to take any action for any reason, then the aggrieved Owner may initiate on his own any action or remedy provided in these Covenants, including an action at law or in equity. The schedule and dispute resolution requirements outlined in this procedure.
shall not apply if the Association deems it necessary to obtain an immediate injunction or other court order to prevent imminent harm or significant hardship to persons or property.

Section 15.3. Remedies. The Association, through its Board, may take any and all actions it deems advisable to enforce these Covenants as specifically provided in these Covenants, including an action at law or in equity. In addition, and upon thirty (30) days written notice, the Board may suspend the voting rights of an Owner deemed in violation of these Covenants. At the Board’s discretion, it may assume maintenance responsibilities of an Owner if, in the reasonable opinion of the Board, the level and quality of maintenance undertaken by such Owner does not satisfy these Covenants. 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 Association shall proceed. The Association shall have a right of entry on any part of the Owner’s Lot to implement this remedy and enforce the Covenant violation. If the Association incurs expenses for the maintenance, repair or replacement of any portion of the Common Area, including the Structures and Improvements located thereon, and such maintenance, repair or replacement is directly attributable to the negligent or willful act or omission of an Owner or his family member, guest, invitee or tenant, then such expenses shall be a personal obligation of such Owner. All the remedies set forth herein are cumulative and not exclusive.

Section 15.4. Reimbursement by Owner. If the Association assumes maintenance of an Owner’s Lot and incurs expenses therefor, or if the Association incurs expenses for the maintenance, repair or replacement of any portion of the Common Area and such maintenance, repair or replacement is directly attributable to the negligent or willful act or omission of an Owner or his family member, guest, invitee or tenant, then all such expenses are chargeable to the Owner and the Owner shall reimburse the Association. The Association shall serve a Demand for Reimbursement to the Owner detailing the expenses. If such Owner fails to pay the Demand for Reimbursement within thirty (30) days, all sums due and owing shall bear interest at the Default Rate from the date of the expenditure until payment in full. Such charges will be a Default Assessment as provided in Article 11.5.

Section 15.5. No Waiver. The failure of the Association, its Board of Directors, the Manager, or any aggrieved Owner(s) to enforce these Covenants at any time for any instance shall 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 Riverview Meadows Documents at any future time.

Section 15.6. No Liability. The Association, Board of Directors, Manager or any Owner shall not be liable to any other Owner for the failure to enforce any of Riverview Meadows Documents at any time.

Section 15.7. Recovery of all Costs of Enforcement. The Association shall be entitled to recover all fees and costs incurred by it in implementing any of the enforcement remedies authorized herein. If legal assistance is obtained to enforce any of the provisions of Riverview Meadows Documents, or represent the Association in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of Riverview Meadows Documents, the Association

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shall be entitled to its reasonable consultant’s fees and attorneys’ fees (including legal assistant fees).

ARTICLE XVI
TERM AND AMENDMENT

Section 16.1. Term. These Covenants shall be perpetual and shall remain in effect indefinitely as amended from time to time.

Section 16.2. Amendment Prior to Sale of a Lot. Prior to the sale of any Lot (excluding any sale to a Successor Declarant), Declarant or a Successor Declarant may unilaterally modify, amend or restate these Covenants 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.

Section 16.3. Amendment After Sale of a Lot 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 modify, amend or restate 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 Riverview Meadows Homeowners 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.

Section 16.4. Amendment After Expiration of the Period of Declarant Control. After the expiration of the Period of Declarant Control, these Covenants, or any provision of it, may be modified, amended, or restated as to the whole or any portion of the Property only upon the affirmative two-thirds vote (66%) of all Owners of the Association in good standing and entitled to vote. If a particular amendment purports to amend, expand, reduce or eliminate any Easement relative to the Common Area or any Improvements located thereon, then, in addition to obtaining the requisite two-thirds affirmative vote (66%), such particular amendment shall contain acknowledged signatures of all Owners of Lots directly burdened or encumbered by such change in easement. Joinder of the First Mortgagees shall not be required in order to effect an amendment. Any document of amendment shall be memorialized by written instrument and shall be immediately effective upon recording with the Flathead County Clerk and Recorder. It is sufficient that the written instrument be signed and acknowledged by the President of the Association provided it is accompanied by a sworn certificate signed and acknowledged by the president and secretary of the Association verifying that the amendment passed in accordance with the procedure set forth below.
Section 16.5. Amendment Procedure by Association. The procedure for amending these Covenants shall be as follows:

(i) The Association or any Owner may propose any revision, addition or deletion of one or more Covenants at any time. For any proposed change, the Association will send or give written notice of a proposed change to each Member of the Association at least sixty (60) days prior to the Association’s regular annual meeting. The proposed changes may be summarized.

(ii) At or before the annual meeting, the precise, proposed change(s) will be distributed in writing to each Member.

(iii) The Association will provide to the Owners in attendance a written ballot clearly stating the proposed changes in the precise language to be used and recorded. Owners who timely request in advance to vote by mail may do so. The Association shall send via registered mail a ballot to such Owners, who shall mark their vote, sign it, and return it to the Board prior to the annual meeting via registered, certified mail, return receipt requested.

(iv) The names of the Owners present at the meeting shall be noted in the minutes, but such Owners shall vote by secret, written ballot. Any Owner may waive the confidentiality of his ballot without compromising its effect. Any Owner may vote by proxy by giving the proxy a signed, written authorization to act as proxy. A proxy may be revoked either orally or in writing at any time by the Owner who gave it. The ballots cast in person or by proxy, and by mail, if received prior to the date of the annual meeting, shall be counted by the Association’s secretary and by at least one other individual appointed to assist the secretary.

(v) The quorum required for voting on an amendment of these Covenants shall be a representation of two-thirds (66%) of the Lots of which the Owners are in good standing in the Association and entitled to vote. Lots of which any Owner is present in person, by signed, written proxy or by timely received mailed ballot shall be counted as represented for purposes of determining a quorum. Once present, a quorum cannot be broken by the subsequent departure or withdrawal of Owners, their proxies or their ballots.

(vi) The secretary and at least one other individual appointed to assist the secretary shall collect and count all ballots cast. An affirmative two-thirds (66%) vote of all Lots of which the Owners are in good standing in the Association and entitled to vote shall carry the vote. Additional written ballots, signed, faxed or transmitted electronically, may be collected following the meeting.

(vii) The voting results shall be announced at the meeting or as soon thereafter as possible, with the number of Lots voting in favor of the proposed change(s) and the number of Lots voting against the proposed change(s).
(viii) The president and secretary shall certify in writing, under oath, that the above steps were followed and that the change(s) were voted on and approved by the requisite majority.

(ix) The amendment(s) and the president and secretary's sworn certificate shall be filed for recording with the Flathead County Clerk and Recorder's office. Upon recording, the amendments shall be in full force and effect.

Section 16.6. Declarant's Approval. Notwithstanding the provisions of this Article, no modification, amendment, or restatement of these Covenants will be effective in any event during the Period of Declarant Control absent the written approval of Declarant.

Section 16.7. 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, invitees, and their respective heirs, successors, and assigns.

Section 16.8. Version and Date of Amended Covenants. Each amendment to these covenants which is approved as provided herein shall be reflected in a complete, re-written Restatement of Covenants, Conditions, Restrictions, and Easements with a subsequent version number. These Covenants shall bare a version of “1.0 Dated September 5, 2017.” All subsequent amendments and versions shall bare subsequent numbers and dates and shall be fully recorded with the Flathead County Clerk and Recorders office. Upon the recording of a subsequent version number the previously recorded covenants shall be of no further force or effect and the subsequent version shall supercede and replace the previous version.

ARTICLE XVII
MISCELLANEOUS PROVISIONS

Section 17.1. Attorney's Fees. In any litigation relating to the interpretation, performance or nonperformance, violation, or enforcement of these Covenants, the prevailing party shall be entitled to costs of suit and a reasonable attorney's fee.

Section 17.2. Notices. All notices given under these Covenants will be sent by any of the following methods: (i) personal delivery, which will be effective upon receipt; (ii) by regular, registered or certified mail, postage prepaid, which will be effective three days after deposit in the U.S. mail; or (iii) by email, to the email address currently on file with the Association, which email will be effective on the date of the time-stamp of the email.

Section 17.3. Severability. These Covenants, to the extent possible, shall be construed or reformed so as to give validity to all of its provisions. Any provision of these Covenants 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 17.4. Construction. In interpreting words in these Covenants, 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 17.5. Headings. The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of these Covenants.

Section 17.6. Waiver. No failure on the part of the 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 herein. No waiver will be effective unless it is in writing and signed by the President of the Board on behalf of the Association.

Section 17.7. Limitation of Liability. The Owners, Members, the Association, and all Directors and officers of the Board of Directors shall not be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under Riverview Meadows Documents if the action or failure to act was made in good faith. The Association shall indemnify all Directors and officers of the Board of Directors with respect to any act taken in their official capacity to the extent provided in these Covenants, the Articles of Incorporation, the Bylaws, and pursuant to Montana law.

Section 17.8. Conflicts Between Documents. In case of conflict between these Covenants and the Articles of Incorporation or the Bylaws, these Covenants shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 17.9. Assignment to Successor Declarant. If the Declarant sells all or a portion of the Property in a bulk sale for the purpose of development, home site building, and sale, Declarant shall assign to such Successor Declarant all or any part of the Reserved Declarant Rights or any of Declarant’s other rights and reservations hereunder. Such Successor Declarant 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 Declarant, all in a written instrument duly recorded in the records of the Clerk and Recorder of Flathead County, Montana. 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.
IN WITNESS WHEREOF, Declarant has signed this Declaration on the date shown above.

MKAY ENTERPRISES, a General Partnership

[Signature]
MICHAEL MORTON, General Partner

STATE OF MONTANA
County of Flathead

This instrument was acknowledged before me on 9/5, 2017, by Michael Morton, General Partner of Mkay Enterprises.

[Signature]
LAURA PRINGNITZ
NOTARY PUBLIC for the State of Montana
Residing at Whitefish, Montana
My Commission Expires April 10, 2019

[Signature]
LAURA PRINGNITZ
Notary Public for the State of Montana
Residing at WHITEFISH, Montana
My commission expires APRIL 10, 2019
Exhibit A

Riverview Meadows Drainage and Stormwater Management Facilities Plan

(Dated September 5, 2017)
Riverview Meadows Subdivision - Phase II
Operation & Maintenance Manual

I. INTRODUCTION

One of the key components of any Storm Water Pollution Prevention Plan is routine inspection and maintenance. This manual is intended to set a level of service standards for Operation & Maintenance (O&M) of the private storm drain system in order to ensure proper operation. This O&M manual is to be used in conjunction with the approved set of construction documents as a reference in the overall operation and maintenance of the Riverview Meadows Subdivision storm water conveyance and treatment system for lots 14, 15, and 16. The manual should be updated as required to reflect any physical or procedural changes to the overall operation and maintenance of the system.

II. Storm Drain System Overview

The storm drain system infrastructure consists of curb inlets and area drains which collect the excess storm water runoff and convey the flows via a subsurface pipe network to an underground pipe detention facility located beneath the proposed parking lot. The peak flows are then detained underground and released at pre-developed rates which are controlled by a flow control tee with a 2.5" orifice. The new pipe conveyance system is connected to an existing storm drain manhole located north of lot 15 on Akers Lane.

III. Owner Responsibilities

It is the responsibility of Mkay Enterprises (Michael Morton and Steve Kay) to inspect, maintain, repair and replace (if necessary) at the owners own expense, all private storm water system components which are located on the property. Inspection frequency shall be at least once a year (typically in the spring prior to the rainy season) to ensure the proper operation of all facilities associated with the storm water system. The system should also be inspected after each storm event that could have adversely impacted the drainage system or in response to visible problems. Existing site conditions may warrant more frequent inspections and it is the Owner’s responsibility to update the O&M manual as necessary.

CATCH BASINS / AREA DRAINS

Cleaning
Catch basins and inlets should be cleaned when they become one third full to maintain sediment-trapping capacity. Catch basin cleaning should be performed in a manner that keeps removed sediment and water from being discharged back into the storm drain system. Inlet should be kept clean of debris and litter.
Safety
Work inside underground structures requires special OSHA required confined space equipment and procedures where applicable.

Materials Handling
Disposal of waste from maintenance of drainage facilities shall be conducted in accordance with local, state and federal regulations. Removed sediment must be disposed of in an approved fashion. Water should be disposed of in a sanitary sewer after oils are removed using oil absorbent materials or other mechanical means. Used oil absorbents should be recycled or disposed according to the manufacturer's instructions.

Repairs
Repair any damages that prevent the catch basin from functioning as designed.

MANHOLES

Cleaning
Inspect the manhole structure and check the frame and lid for cracks and wear, such as rocking lids or lids moved by traffic. Manhole sumps should be cleaned when they become one third full to maintain sediment-trapping capacity. For the manhole with the flow control tee structure, be sure to inspect the orifice and overflow pipe to ensure that flow is not restricted or blocked.

Safety
Work inside underground structures requires special OSHA required confined space equipment and procedures where applicable.

Materials Handling
Disposal of waste from maintenance of drainage facilities shall be conducted in accordance with local, state and federal regulations.

Repairs
Repair any damages that prevent the manhole from functioning as designed. Repair or replace to original design specification any outlet orifice that is enlarged, bypassed or damaged. Make certain that overflow outlets are not blocked. Structures should be securely in place and within 10 percent of vertical. Repair the outlet pipe structure if it has leaking connections or holes not specified by the design documents.

STORMTECH DETENTION SYSTEM

Cleaning
Recommended inspection for the StormTech Chamber system shall be every six (6) months for the first year of operation. For subsequent years, inspection shall be adjusted based upon previous
observation of sediment deposition. Sediment removal and cleaning frequencies are listed in the attached O&M manual from StormTech.

DOWNSTREAM DEFENDER SYSTEM

Cleaning
Recommended inspection for the Downstream Defender system shall be every six (6) months during the first year of operation to determine site-specific rate of pollutant accumulation. Sediment removal, oil removal, and floatable removal frequencies are listed in the attached O&M manual from Hydro International.

PIPES

Cleaning
Pipes are difficult to inspect requiring special equipment and training. Usually, if a problem occurs such as blockage of flow, specialized services will be required to inspect and clean the pipe. Pipes should be cleaned when sediment depth is greater than 20% of the pipe diameter. When cleaning pipes, be sure to install a downstream debris trap to minimize the debris discharge to the public storm sewer system.

Safety
Work inside underground structures requires special OSHA required confined space equipment and procedures where applicable.

Materials Handling
Disposal of waste from maintenance of drainage facilities shall be conducted in accordance with local, state and federal regulations.

Repairs
Repair or replace any damaged pipes that show breaks or dents which close more than 20 percent of the pipe diameter.

PAVEMENT SWEEPING

Cleaning
Sweeping should be performed to remove sand, gravel, sediment, debris, and litter from the parking lot areas. In addition to limiting the amount of sediment washed into the storm drain system, sweeping also reduces dust during dry weather. By reducing the amount of sediment washed into catch basins, detention systems, and other facilities can save money because sweeping is generally cheaper than removing the same sediment from the storm system.
CLTA GUARANTEE

ISSUED BY
STEWART TITLE GUARANTY COMPANY
a corporation, herein called the Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE, AND SUBJECT TO THE FURTHER EXCLUSION AND LIMITATION THAT NO GUARANTEE IS GIVEN NOR LIABILITY ASSUMED WITH RESPECT TO THE IDENTITY OF ANY PARTY NAMED OR REFERRED TO IN SCHEDULE A OR WITH RESPECT TO THE VALIDITY, LEGAL EFFECT OR PRIORITY OF ANY MATTER SHOWN THEREIN.

GUARANTEES

define

the Assured named in Schedule A against actual monetary loss or damage not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

Countersigned by:

Matt Morris
President and CEO

Denise Carraux
Secretary

For purposes of this form the “Stewart Title” logo featured above is the represented logo for the underwriter, Stewart Title Guaranty Company.
GUARANTEE CONDITIONS AND STIPULATIONS

1. **Definition of Terms** – The following terms when used in this Guarantee mean:
   (a) "the Assured"; the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company;
   (b) When the term "land" is used in this Guarantee, it shall mean land as described or referred to in Schedule (A)(C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A)(C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
   (c) "mortgage"; mortgage, deed of trust, trust deed, or other security instrument.
   (d) "public records"; records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
   (e) "date"; the effective date.

2. **Exclusions from Coverage of this Guarantee** – The Company assumes no liability for loss or damage by reason of the following:
   (a) Taxes or assessment which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
   (b) (1) Unpublished mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water; whether or not the matters excluded by (1), (2) or (3) are shown by the public records.
   (c) Assurances to title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A)(C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways on which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.
   (d) (1) Defects, liens, encumbrances, or adverse claims against the title, if assurances are provided as to such title, and as limited by such assurances. (2) Defects, liens, encumbrances, adverse claims or other matters (a) whether or not shown by the public records, and which are created, suffered, assumed or agreed to by one or more of the Assureds; (b) which result in no loss to the Assured; or (c) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of assurances provided.

3. **Notice of Claims to be Given by Assured Claimant** – An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then any liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required, provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. **No Duty to Defend or Prosecute** – The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

5. **Company’s Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate** – Even though the Company has no duty to defend or prosecute as set forth in Paragraph 4 above:
   (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding. Interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
   (b) If the Company elects to exercise its options as stated in Paragraph 5(a), the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
   (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appear in any adverse judgment herein.
   (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appearances therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to provide the Company's required cooperation to the Assured under the Guarantee, then the Company may terminate any contract which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

6. **Proof of Loss or Damage** – In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided to the Assured, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

7. **Options to Pay or Otherwise Settle Claims; Termination of Liability** – In case of a claim under this Guarantee, the Company shall have the following additional options:
   (a) To Pay or Tender Payment of the Amount of Liability or to Purchase the indubitably.

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File No.: 3546
2222 Guarantee (6-6-92)
Page 2 of 3 of Policy Serial No.: G-0000-436604592
The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to pay the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of the indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its option under Paragraph 5, and the Guarantee shall be surrendered to the Company for cancelation.

(b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To Pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

The exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 5.

8. Determination and Extent of Liability – This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the exclusions stated in Paragraph 2.

The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

(a) the amount of liability stated in Schedule A;

(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagor, as limited or provided under Section 7 of these Conditions and Stipulations or as reduced under Section 10 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon;

(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this Guarantee.

9. Limitation of Liability –

(a) If the Company establishes the title or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.

(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

10. Reduction of Liability or Termination of Liability – All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 5 shall reduce the amount of liability pro tanto.

11. Payment of Loss

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

12. Subrogation Upon Payment or Settlement

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim which the Company is indemnified against by this Guarantee, whether or not the Claimant has a right of subrogation against the Assured or any other person.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest and costs of collection.

13. Arbitration – Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is $1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at the date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the State in which the land is located permits a court to award attorneys' fees to a prevailing party. Just as a court may grant relief to an award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.

14. Liability Limited to This Guarantee, Guarantee Entire Contract –

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) Except for an endorsement to this Guarantee, can be made except if an endorsement hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

15. Notices, Where Sent – All notices required to be given to the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at P.O. Box 2029, Houston, Texas 77252-2029.

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File No.: 63434

2222 Guarantee (6-6-92)

Page 3 of 3 of Policy Serial No.: G-0000-436604592

City Council Packet October 2, 2017 Page 268 of 446
SUBDIVISION GUARANTEE
SCHEDULE A

File No.: 63434

Guarantee No.: G-0000-436604592

Date of Guarantee: July 18, 2017 at 5:00 P.M.

Liability: $1,000.00

Premium: $125.00

A. Assured:

Sands Surveying, Inc.

B. Assurances:

1. Description of the land:

Tract 1 of Certificate of Survey No. 20303, located and being in the Northeast Quarter of the Southeast Quarter (NE\(\frac{1}{4}\)SE\(\frac{1}{4}\)) of Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana.

2. Name of Proposed Subdivision Plat or Condominium Map:

Riverview Meadows

3. That the only hereafter named parties appear to have an interest showing in the public records affecting the land necessitating their execution of the name proposed plat or map area as follows:

Mkay Enterprises, a Montana General Partnership - Vested Owner
Glacier Bank - Lender
SUBJECT TO:

1. Real estate taxes or special assessments for the year(s) 2017, that are not yet due or payable.

2. For informational purposes only, do not rely upon for a tax payment. Flathead County records indicate the taxes for the year 2016 are:
   - FIRST HALF: $1045.90 PAID
   - SECOND HALF: $1045.87 PAID
   - TOTAL: $2,091.77
   - Assessor No.: 74-0954600
   - Tax Roll No.: 45392

3. Ordinance No. 96-14 regarding the Whitefish Urban Renewal District recorded December 20, 1996 as Document #199635509310, records of Flathead County, Montana.


5. Provisions and conditions contained in Certificate of Approval by the State of Montana Department of Health and Environmental Sciences as attached to Certificate of Survey No. 11155.

6. All matters, covenants, conditions, restrictions, easements and any rights, interest or claims which may exist by reason thereof, disclosed by Certificate of Survey No. 20303, but deleting any covenant, conditions or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

7. Notice of Late-Comers Agreement recorded January 20, 2004 as Document #200402008450, records of Flathead County, Montana.

8. Deed of Trust dated November 2, 2016 to secure payment of $961,326.50, together with interest and any other obligations secured thereby, recorded November 7, 2016 as Document #201600024813, records of Flathead County, Montana.
   - Grantor: Mkay Enterprises WATA Mkay Enterprises, a Montana General Partnership
   - Trustee: Fidelity Title Company
   - Beneficiary: Glacier Bank

9. All matters, covenants, conditions, restrictions, easements and any rights, interest or claims which may exist by reason thereof, disclosed by the proposed plat of Riverview Meadows, but deleting any covenant, conditions or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

Survey/Plat, when recorded, must be in compliance with the provisions of the Montana Subdivision and Platting Act, 1973, (Sections 76-3-101 M.C.A. through 76-3-614 M.C.A.) and the regulations adopted pursuant thereto.

Easements, conditions and restrictions as disclosed or to be disclosed on proposed Survey/Plat to be recorded prior to or as part of this transaction.
STG Privacy Notice
Stewart Title Companies

WHAT DO THE STEWART TITLE COMPANIES DO WITH YOUR PERSONAL INFORMATION?

Federal and applicable state law and regulations give consumers the right to limit some but not all sharing. Federal and applicable state law regulations also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand how we use your personal information. This privacy notice is distributed on behalf of the Stewart Title Guaranty Company and its title affiliates (the Stewart Title Companies), pursuant to Title V of the Gramm-Leach-Bliley Act (GLBA).

The types of personal information we collect and share depend on the product or service that you have sought through us. This information can include social security numbers and driver's license number.

All financial companies, such as the Stewart Title Companies, need to share customers' personal information to run their everyday business—to process transactions and maintain customer accounts. In the section below, we list the reasons that we can share customers' personal information; the reasons that we choose to share; and whether you can limit this sharing.

### Reasons we can share your personal information.

<table>
<thead>
<tr>
<th>Reason</th>
<th>Do we share</th>
<th>Can you limit this sharing?</th>
</tr>
</thead>
<tbody>
<tr>
<td>For our everyday business purposes— to process your transactions and maintain your account. This may include running the business and managing customer accounts, such as processing transactions, mailing, and auditing services, and responding to court orders and legal investigations.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>For our marketing purposes— to offer our products and services to you.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>For joint marketing with other financial companies</td>
<td>No</td>
<td>We don't share</td>
</tr>
<tr>
<td>For our affiliates' everyday business purposes— information about your transactions and experiences. Affiliates are companies related by common ownership or control. They can be financial and non-financial companies. Our affiliates may include companies with a Stewart name, financial companies, such as Stewart Title Company.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>For our affiliates' everyday business purposes— information about your creditworthiness.</td>
<td>No</td>
<td>We don't share</td>
</tr>
<tr>
<td>For our affiliates to market to you — For your convenience, Stewart has developed a means for you to opt out from its affiliates marketing even though such mechanism is not legally required.</td>
<td>Yes</td>
<td>Yes, send your first and last name, the email address used in your transaction, your Stewart file number and the Stewart office location that is handling your transaction by email to <a href="mailto:optout@stewart.com">optout@stewart.com</a> or fax to 1-800-335-9591.</td>
</tr>
<tr>
<td>For non-affiliates to market to you. Non-affiliates are companies not related by common ownership or control. They can be financial and non-financial companies.</td>
<td>No</td>
<td>We don't share</td>
</tr>
</tbody>
</table>

We may disclose your personal information to our affiliates or to non-affiliates as permitted by law. If you request a transaction with a non-affiliate, such as a third party insurance company, we will disclose your personal information to that non-affiliate. [We do not control their subsequent use of information, and suggest you refer to their privacy notices.]

### SHARING PRACTICES

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tr>
<td>How often do the Stewart Title Companies notify me about their practices?</td>
<td>We must notify you about our sharing practices when you request a transaction.</td>
</tr>
<tr>
<td>How do the Stewart Title Companies protect my personal information?</td>
<td>To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer, file, and building safeguards.</td>
</tr>
<tr>
<td>How do the Stewart Title Companies collect my personal information?</td>
<td>We collect your personal information, for example, when you request insurance-related services. We also collect your personal information from others, such as the real estate agent or lender involved in your transaction, credit reporting agencies, affiliates or other companies.</td>
</tr>
<tr>
<td>What sharing can I limit?</td>
<td>Although federal and state law give you the right to limit sharing (e.g., opt out) in certain instances, we do not share your personal information in those instances.</td>
</tr>
</tbody>
</table>

Contact us: If you have any questions about this privacy notice, please contact us at: Stewart Title Guaranty Company, 1980 Post Oak Blvd., Privacy Officer, Houston, Texas 77056.
STG Privacy Notice 2 (Rev 01/26/09) Independent Agencies and Unaffiliated Escrow Agents

WHAT DO/DOES THE Sterling Title Services - Kalispell Branch (Main) DO WITH YOUR PERSONAL INFORMATION?

Federal and applicable state law and regulations give consumers the right to limit some but not all sharing. Federal and applicable state law regulations also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand how we use your personal information. This privacy notice is distributed on behalf of Sterling Title Services - Kalispell Branch (Main), and its affiliates ("N/A"), pursuant to Title V of the Gramm-Leach-Bliley Act (GLBA).

The types of personal information we collect and share depend on the product or service that you have sought through us. This information can include social security numbers and driver's license number.

All financial companies, such as Sterling Title Services - Kalispell Branch (Main), need to share customers' personal information to run their everyday business—to process transactions and maintain customer accounts. In the section below, we list the reasons that we can share customers' personal information; the reasons that we choose to share; and whether you can limit this sharing.

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<td>For our everyday business purposes—to process your transactions and maintain your account. This may include running the business and managing customer accounts, such as processing transactions, mailing, and auditing services, and responding to court orders and legal investigations.</td>
<td>Yes</td>
<td>No</td>
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<td>For our marketing purposes—to offer our products and services to you.</td>
<td>Yes</td>
<td>No</td>
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<td>For joint marketing with other financial companies</td>
<td>No</td>
<td>We don't share</td>
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<tr>
<td>For our affiliates' everyday business purposes—information about your transactions and experiences. Affiliates are companies related by common ownership or control. They can be financial and non-financial companies.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>For our affiliates' everyday business purposes—information about your creditworthiness.</td>
<td>No</td>
<td>We don't share</td>
</tr>
<tr>
<td>For our affiliates to market to you</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>For non-affiliates to market to you. Non-affiliates are companies not related by common ownership or control. They can be financial and non-financial companies.</td>
<td>No</td>
<td>We don't share</td>
</tr>
</tbody>
</table>

We may disclose your personal information to our affiliates or to non-affiliates as permitted by law. If you request a transaction with a non-affiliate, such as a third party insurance company, we will disclose your personal information to that non-affiliate. [We do not control their subsequent use of information, and suggest you refer to their privacy notices.]

Sharing practices

<table>
<thead>
<tr>
<th>How often do/does Sterling Title Services - Kalispell Branch (Main) notify me about their practices?</th>
<th>We must notify you about our sharing practices when you request a transaction.</th>
</tr>
</thead>
<tbody>
<tr>
<td>How do/does Sterling Title Services - Kalispell Branch (Main) protect my personal information?</td>
<td>To protect your personal information from unauthorized access and use, we use security measures that comply with federal and state law. These measures include computer, file, and building safeguards.</td>
</tr>
</tbody>
</table>
| How do/does Sterling Title Services - Kalispell Branch (Main) collect my personal information? | We collect your personal information, for example, when you 
• request insurance-related services 
• provide such information to us 
We also collect your personal information from others, such as the real estate agent or lender involved in your transaction, credit reporting agencies, affiliates or other companies. |
| What sharing can I limit? | Although federal and state law give you the right to limit sharing (e.g., opt out) in certain instances, we do not share your personal information in those instances. |
| Contact Us | If you have any questions about this privacy notice, please contact us at: Sterling Title Services - Kalispell Branch (Main), 211 South Main Street, Kalispell, MT 59901 |
WARRANTY DEED

Karen S. Stevens, Trustee of the Karen S. Stevens Revocable Trust dated January 9, 2006, hereinafter called Grantor(s), does hereby grant, bargain, sell and convey unto Mtny Enterprises, a Montana General Partnership, whose address is 6361 Highway 93 South, Whitefish, MT 59937, hereinafter called the Grantee, the following described premises situated in Flathead County, Montana:

- TRACT 1 OF CERTIFICATE OF SURVEY NO. 1115
- TRACT 2 OF CERTIFICATE OF SURVEY NO. 1115

SUBJECT TO covenants, conditions, restrictions, provisions, easements and encumbrances apparent or of record.
TO HAVE AND TO HOLD the said premises, with its appurtenances unto the said Grantor, and its heirs and assigns forever, and to the said Grantor, the said premises are free from all incumbrances except current years' taxes, liens, and assessments, and except U.S. Patent restrictions, restrictions, covenants of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: May 18, 2015

Karen S. Stevens, Trustee of the Karen S. Stevens Revocable Trust, dated January 9, 2006

STATE OF Montana

COUNTY OF Flathead

This instrument was acknowledged before me on May 18, 2015, by Karen S. Stevens, Trustee of the Karen S. Stevens Revocable Trust, dated January 9, 2006.

Theresa B. Dugan
Notary Public for the State of Montana

My Commission Expires: February 23, 2019
TO HAVE AND TO HOLD the said premises, with its appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantee does hereby covenant to and with the said Grantee, that the Grantee is the owner in fee simple of said premises; that said premises are free from all encumbrances except current year taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantee will warrant and defend the same from all lawful claims whatsoever.

Dated June 19, 2015

Karen S. Stevens, Trustee of the Karen S. Stevens Revocable Trust, dated January 9, 2006

Karen S. Stevens

STATE OF Montana

COUNTY OF Flathead

This instrument was acknowledged before me on June 19, 2015, by Karen S. Stevens, Trustee of the Karen S. Stevens Revocable Trust, dated January 9, 2006.

Theresa A. Dugan
Notary Public for the State of Montana
Residing at Columbia Falls
My Commission Expires: February 23, 2019
EXHIBIT 'A'

LEGAL DESCRIPTION:

PARCEL 1:
A TRACT OF LAND SITUATED, LYING AND BEING IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, KNOWN AS:
TRACT 1 OF CERTIFICATE OF SURVEY NO. 11155.

PARCEL 2:
A TRACT OF LAND SITUATED, LYING AND BEING IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, KNOWN AS:
TRACT 2 OF CERTIFICATE OF SURVEY NO. 11155.
THIS MAP IS FURNISHED FOR INFORMATION PURPOSES ONLY TO ASSIST IN PROPERTY LOCATION WITH REFERENCE TO STREETS AND OTHER PARCELS. NO REPRESENTATION IS MADE AS TO ACCURACY AND VERIFYING TITLE SERVICES ASSUMES NO LIABILITY FOR ANY LOSS OCCURRING BY RELIANCE THEREON.

COS 20303
Zoomed - Not To Scale

OWNERS' CERTIFICATION:

I hereby certify that the purpose of the division of land is to relocate a common boundary between adjoining properties, and that no additional parcels are hereby created; therefore, this parcel is exempt from review as a subdivision pursuant to Section 78-3-607 (1) (a), MCA.

TRACT 1 are exempt from subdivision review by the Department of Environmental Quality in ARM 19.36.605 (2) (b) as a parcel that has no existing facilities for water supply, wastewater disposal, or solid waste disposal OTHER THAN THOSE THAT WERE PREVIOUSLY APPROVED by the authority under 18-7, chapter 6, part 1, MCA, or that were exempt from such review because new facilities will be constructed on the parcel and the division of land will not cause any conditions of approval, and will not cause exempt facilities to violate any conditions of approval.

TRACT 2 is EXCLUDED from subdivision review by the Department of Environmental Quality in ARM 19.36.605 (2) (b)
CONSENT TO PLATTING

Pursuant to Section 76-3-612, MCA, the undersigned, Glacier Bank, as beneficiary of a Deed of Trust dated November 2, 2016 to secure an payment of $961,326.50, together with interest and any other obligation secured thereby, recorded November 6, 2016 as Document #201600024813, hereby consents to the Platting of a tract of land to be known and named as Riverview Meadows.

IN WITNESS WHEREOF, said party has caused their name to be subscribed hereto on the 1st day of August, 2017

Signature:

Shane Moss Vice President
Printed Name and Title:

STATE OF MONTANA )
COUNTY OF FLATHEAD )

On this 1st day of August, 2017, before me a Notary Public for the State of Montana, personally appeared whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same.

Signature:

Printed Name of Notary LAURA PRINGNITZ
Notary Public for State of MONTANA
Residing at: WHITEFISH
My Commission Expires: APRIL 10, 2019

City Council Packet October 2, 2017   Page 281 of 446
I hereby certify that there are no outstanding taxes on the property assigned the assessor numbers listed above, for the years indicated for each assessor number.

AUG 08 2017
Jody Workman
Deputy Treasurer
### Plant Schedule Street Row Planting

<table>
<thead>
<tr>
<th>STREET</th>
<th>CODE</th>
<th>BFGICAL NAME</th>
<th>LOCATION NAME</th>
<th>QTY</th>
<th>25'</th>
<th>50'</th>
<th>100'</th>
</tr>
</thead>
<tbody>
<tr>
<td>AP</td>
<td>123</td>
<td>Acer Platanoides &quot;Fond&quot; TIM / 'CERER' LIEBRE MAPLE</td>
<td>D+D</td>
<td>25'</td>
<td>50'</td>
<td>100'</td>
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<tr>
<td>AN</td>
<td>124</td>
<td>Acer Rubrum NORTWOOD / NORTWOOD MAPLE</td>
<td>B+B</td>
<td>25'</td>
<td>50'</td>
<td>100'</td>
<td></td>
</tr>
<tr>
<td>AO</td>
<td>125</td>
<td>Acer Rubrum GLECK &quot;TM&quot; / NORTRE NE MAPLE</td>
<td>B+B</td>
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<tr>
<td>AB</td>
<td>126</td>
<td>Acer a Freeman &quot;SERENA&quot; SERENA ALON MAPLE</td>
<td>B+B</td>
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<td>100'</td>
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<tr>
<td>FA</td>
<td>127</td>
<td>Prunus AMER CANA / &quot;AUTUMN PERLE&quot; / &quot;AUTUMN PURPLE&quot; ASH</td>
<td>B+B</td>
<td>25'</td>
<td>50'</td>
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<tr>
<td>GM</td>
<td>128</td>
<td>Gleditsia A RR ACERIA / &quot;HERMIT CORNER&quot; HONEY LOCUST</td>
<td>B+B</td>
<td>25'</td>
<td>50'</td>
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<tr>
<td>GO</td>
<td>129</td>
<td>Gleditsia Macrocarpa / &quot;CARR OAK&quot;</td>
<td>D+D</td>
<td>25'</td>
<td>50'</td>
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<tr>
<td>TL</td>
<td>130</td>
<td>Tilia AMER CANA / &quot;AMER CAN LINDEN&quot;</td>
<td>B+B</td>
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<tr>
<td>JM</td>
<td>131</td>
<td>ULMUS JAPANICA X JAPONICA HERNON / &quot;AGILOYE&quot; ELY</td>
<td>B+B</td>
<td>25'</td>
<td>50'</td>
<td>100'</td>
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<tr>
<td>DRY</td>
<td>132</td>
<td>BFGICAL NAME</td>
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<tr>
<td>LA</td>
<td>133</td>
<td>Carya / LARK</td>
<td>D+D</td>
<td>25'</td>
<td>50'</td>
<td>100'</td>
<td></td>
</tr>
</tbody>
</table>

### Notes
- Contractor shall refer to and adhere to drawings, notes, and specifications.
- Contractor shall maintain a hard copy of drawings and specifications on site during all construction/installation operations.
GENERAL NOTES

1. THE CONTRACTOR SHALL MAKE NO CHANGES TO ANY STANDARDS FOR NURSERY STOCK SIZE, ENSUING FIRM PROPER PLANTING, AND PLANT HEIGHT. ALL PLANTS ARE TO BE PLANTED TO PER A PREPARED SITE PLAN IN THE CONTRACT.

2. ALL PLANTS AND MATERIALS SHALL BE PLANTED IN A DRY, DUG, AND SOWED CONDITION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL PLANTING AND INSTALLATION WORK.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY PLANTING AND INSTALLATION WORK, INCLUDING THE PROPER PLANTING AND INSTALLATION OF PLANTS AND MATERIALS.

ORNAMENTAL PLANTING NOTES

1. ALL PLANTSョ MUST BE PLANTED TO PER THE SITE PLAN, AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY PLANTING AND INSTALLATION WORK.

2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY PLANTING AND INSTALLATION WORK, INCLUDING THE PROPER PLANTING AND INSTALLATION OF PLANTS AND MATERIALS.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY PLANTING AND INSTALLATION WORK, INCLUDING THE PROPER PLANTING AND INSTALLATION OF PLANTS AND MATERIALS.

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20. ALL PLANTS SHALL BE PLANTED TO PER THE SITE PLAN, AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY PLANTING AND INSTALLATION WORK.

NOTES

• CONTRACTOR SHALL REFER TO AND ADHERE TO DRAWINGS, NOTES AND SPECIFICATIONS

• CONTRACTOR SHALL MAINTAIN A HARD COPY OF DRAWINGS AND SPECIFICATIONS ON SITE DURING ALL CONSTRUCTION/INSTALLATION OPERATIONS
APPROXIMATE FINISHED FLOOR ELEVATION, 3028.00+/

EXISTING RIVERS EDGE LOT 33 REAR YARD

PROPOSED LOT 6 DEDICATED OPEN SPACE

PROPOSED LOT 3 REAR YARD

APPROXIMATE FINISHED FLOOR ELEVATION, 3028.00+/-

PROPOSED NEIGHBORHOOD ACCESS TRAIL TO RIVER TRAIL ELEVATION, 3028.00+/

PROPOSED NEIGHBORHOOD ACCESS TRAIL TO RIVER TRAIL ELEVATION, 3028.00+/

Dedicated Open Space

PROPOSED NEIGHBORHOOD ACCESS TRAIL TO RIVER TRAIL ELEVATION, 3028.00+/

DEVELOPMENT

APPROXIMATE FINISHED FLOOR ELEVATION, 3028.00+/

REAR YARD

APPROXIMATE FINISHED FLOOR ELEVATION, 3028.00+/

DEVELOPMENT

REAR YARD
1. CONTRACTOR SHALL REFER TO AND ADHERE TO DRAWINGS, NOTES AND SPECIFICATIONS.
2. CONTRACTOR SHALL MAINTAIN AN ARD COPY OF DRAWINGS AND SPECIFICATIONS ON SITE DURING ALL CONSTRUCTION/INSTALLATION OPERATIONS.

NOTES:
- SEE PLANT SCHEDULE ON SHEET B FOR ALL PLANTED SPECIES.
- Native Plant Restoration: Areas shown are tentative and for planning purposes only. All shows will be done with MEWA approved species.
- SEE SHEET 1.B FOR PLANT SCHEDULE ON SHEET B.
- SHEET 1.B FOR PLANT SCHEDULE ON SHEET B.
- SEE SHEET 1.C FOR GENERAL NOTES.
- SEE SHEET 1.L FOR REFERENCE NOTATION SHEET.
- NOTE: PLANTING SCHEDULES MUST BE CONSIDERED PART OF THE GENERAL SPECIFICATIONS.
- CONTRACTOR SHALL ADHERE TO CONTRACTOR'S CONTRACT WITH CITY OF AUSTIN.
- CONTRACTOR SHALL TO MAINTAIN A COPY OF PLANTING SCHEDULES ON SITE.

RIVERVIEW MEADOWS + PHASE II
WATERHOLE MONTANA
PLANTING & LANDSCAPE PLAN
MAIN TRAIL

City Council Packet October 2, 2017 Page 288 of 446
Lots 14-16 PLANT SCHEDULE

<table>
<thead>
<tr>
<th>Lot</th>
<th>PLANT NAME</th>
<th>QTY</th>
<th>SIZE</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
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<tr>
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<td></td>
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<tr>
<td>16</td>
<td>Native Plant</td>
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Trail - NATIVE PLANT SCHEDULE

<table>
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<th>Lot</th>
<th>PLANT NAME</th>
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Lots 14-16 NATIVE PLANT SCHEDULE

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<tr>
<td>16</td>
<td>Native Plant</td>
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</tbody>
</table>

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SCOTT & TRACEY GERBER
WHITEFISH LAKE LAKESHORE PERMIT
STAFF REPORT #WLP-17-W27
OCTOBER 2, 2017

Property Owner: Scott & Tracey Gerber
Mailing Address: 48 Parsonage Road
Greenwich, CT 06830

Applicant: Terra Designworks, LLC
c/o Kurt Vomfell
Mailing Address: 427 E. Center Street
Kalispell, MT 59901
Telephone Number: 406.270.8054

Contractor: Bear Mountain Builders
Mailing Address: 623 Woodland Place
Whitefish, MT 59937
Telephone Number: 406.261.0483

Property Legal Description: Tract 6ADAC in Section 24, Township 31 North, Range 22 West

Property Address: 1816 Lacy Lane
Lake: Whitefish Lake
Lake Frontage: 87’ per previous permits

Project Description: Install stone stairs within the Lakeshore Protection Zone.

Proposal: The applicant is proposing one activity within the Lake and Lakeshore Protection Zone, to install stone stairs beginning outside of the LPZ and extending through an approved retaining wall. The installation of the stairs would include approximately five (5) new stepping stones within the LPZ. The stairs will be a maximum of 4 feet wide, and approximately 18 square feet of constructed area.

Previously, the applicant received an approved minor variance to the constructed area allowance for the subject property. The variance granted an additional 83 square feet to the constructed area allowance. As the stone stairs will create an additional 18 square feet of constructed area, the applicant is proposing to reduce that same amount from the approved boat canopy over the shore station. Therefore, the approved variance will remain the same, and no new variance is requested.

Frontage and allowable constructed area: The subject property has 87 feet of lakeshore frontage, and is eligible for 696 square feet of constructed area.

Existing Constructed Area: There is an existing dock on the property approved under WLP-01-W9 for 512 square feet. Under WLP-02-W2 the property was approved for a boat rail system. The third permit for the property was approved under WLP-06-W76 for repairs to a riprap retaining wall. Under WLP-08-W17 a boat house deck was permitted for 35 square feet. Recently, under WLP-17-W02 the property was approved for a shore station with a custom-built canopy for 182.75 square feet. Finally, WLV-17-W03 approved a minor variance to the constructed area. In order
to reduce the overall amount of constructed area requested for the minor variance, the applicant proposed removing the permitted boat house deck, two concrete retaining walls, and the existing boat rail system. This reduced the constructed area to a maximum of approximately 778.8 square feet.

Conclusion: The proposed stairs comply with all requirements, most specifically Section 13-3-1, General Construction Standards of the Whitefish Lake and Lakeshore Regulations.

Recommendation: The Whitefish Lakeshore Protection Committee recommends approval of the requested lakeshore construction permit to the Whitefish City Council subject to the following conditions.

Recommended Conditions of Approval:

1. This permit is valid for a period of one year from the date of issuance. Upon completion of the work, please contact the Planning Department at 406-863-2410 for final inspection.

2. The Lakeshore Protection Zone shall be defined as the lake, lakeshore and all land within 20 horizontal feet of the average high water line at elevation 3,000.79’.

3. The proposed project dimensions specified on the application project drawing shall not be exceeded unless modified by conditions of the approved permit. Changes or modifications to increase any dimension or change configuration must be approved through a permit amendment.

4. Temporary storage of vehicles, trailers, equipment, or construction materials in the lakeshore protection zone is prohibited.

5. The natural protective armament of the lakeshore and lakebed must be preserved whenever possible. Following installation, the lakeshore and lakebed shall be returned to its condition prior to construction.

6. Prior to the start of any construction activity, an effective siltation barrier shall be installed at the lakeshore protection zone boundary. The barrier shall be designed and constructed to prevent silt and other debris from the construction site entering the lakeshore protection zone, and shall be maintained until such a time as permanent erosion control and site stabilization are established on the property.

7. All work shall be done when the lake is at low pool and the construction site is dry.

8. Any existing or disturbed areas inside the lakeshore zone may be revegetated. New plants shall be native to the Flathead Valley or cultivars whose form, color, texture, and character approximates that of natives. A resource file on native plants is available at the City of Whitefish Planning Department. Application of fertilizer is permitted only in minimal amounts to establish new plantings.

9. All material which is excavated from the Lakeshore Protection Zone shall be removed entirely from the lakeshore protection zone and deposited in such a manner as to prohibit reentry into the lake.

Stone Stairs

10. The stone stairs shall have a maximum width of four feet (4’) and shall be designed to provide access only.
11. The stone stairs shall be located as shown on the application project drawing. The stone/rock used shall be free of silts, sands or fines.

12. Stairways and walkways constructed of impervious material, including dry laid stone, are subject to the maximum allowable constructed area.

13. Cultured or natural stone or rock shall be used for the proposed work within the lakeshore protection zone. The stones or rock to be used shall be dry set.

14. Rock may be handpicked from the immediate lakeshore but removal of said rock shall only be allowed if a solid armament of rock remains in place. The removal of any rock which exposes silts, sands or fines is prohibited.

Report by: Bailey Minnich
The meeting was called to order at 5:59 pm by Chairman Herb Peschel.

MEMBERS PRESENT:
- Koel Abell, Herb Peschel, Joe Malletta, Donna Emerson and Brian Sullivan. Bailey Minnich and Lauren Stevens of the Whitefish Planning Office were also present.

MEMBERS ABSENT: Jim Laidlaw, Steve Qunell

ADDITIONS/CORRECTIONS TO TONIGHT'S AGENDA: WLP-17-W27 to be heard first.

APPROVAL OF AUGUST MINUTES:
- Joe moved to approve the August 9, 2017 minutes as presented. Koel seconded the motion. All voted in favor to approve the minutes. Motion passed unanimously.

GENERAL PUBLIC COMMENT: none

Old Business:
WLP-17-W25 – Gary Dunlop – Stone Stairs
[Present: Gary Dunlop, Jordan Dunlop]

Discussion:
Staff began with a presentation of the proposed project and draft lakeshore permit report. Discussion was held on the fact that the dock was previously a shared dock between two properties. The original permit was in 1997 allowing a 980 square foot dock. This is 380 square feet greater than the constructed area allowed for this property. In order to add stone stairs, the dock would need be reduced, or a variance would need to be granted. Staff wanted to know if the committee would like to make it a condition of approval that the dock would need to be reduced, or require that the dock be removed prior to approval.

The applicant noted that when they purchased the property 4 or 5 years ago, they were not aware that the dock was over the allowed square footage. They are asking for stone stairs because of the steep grade down to the water. It drops 9 feet over a 20 foot span. This steep grade makes it difficult for older adults to get down to the water as they can slip. The proposed project is only 25 square feet of stairs. The applicant believes that to remove sections of the existing dock would make it unsafe due to a lot of wave action in this area of the lake. A skinny dock would be unstable without the extra square footage.

Discussion was held on what typically happens when a shared dock is no longer being shared. Staff looked through historical permits and could not find when the dock would have been split, or if both property owners were aware of it. It is unfortunate that the new owners were not informed of this at the time of purchase. The committee wanted to know if staff believed that the dock should be brought in to compliance. Staff thinks that it should, but is unsure if it is
considered non-conforming or a violation because there is no variance. Staff needs to talk it over with the city attorney.

The proposed stairs would extend down from the existing stairs to the end of the grass. The slope is fairly consistent until you get down to the rock along the shore. The steps would stop behind the rock wall. The property owners do not wish to reduce the dock by the required amount as it would create other issues. This would require a variance application. The biggest part of a variance is showing hardship. Determination of a hardship is up to the committee and the City Council. Current dock has 4 or 5 jet ski ramps that don’t meet riparian setbacks anymore. The dock must also be moved to the center of the property to meet the setback of 25 feet from the property line. The property owner stated that they had moved the dock to the center of the property in the past few weeks. Construction would not necessarily happen this fall, therefore the permit can be tabled until the variance application has been submitted.

Motion:
- Joe moved to table the permit until the variance permit has been submitted. Koel seconded it.
  - The motion was approved unanimously 5-0.

NEW BUSINESS
WLP-17-W27 – Gerber – Stone Stairs
[Present: Kurt Vomfell]

Discussion:
Staff began with a presentation of the proposed project and draft lakeshore permit report.

Kurt Vomfell, the applicant’s representative, presented the proposed project. They would like to install stone stairs beginning outside of the lakeshore protection zone extending in to the zone. There would be approximately five stones that are a maximum of 4 feet wide. This would create 18 square feet of constructed area. The applicants have previously been granted a minor variance for an additional 83 square feet of constructed area. They propose to reduce their existing constructed area by 18 square feet to accommodate the new stone steps. This reduction would come from the custom boat canopy that was previously approved. This compromise was proposed due to current issues of lake access on the property. There were design issues where original stairs were proposed, and this application would have them offset 6 square feet of the current retaining wall with 6 square feet of stairs.

Work may not begin until next spring. The applicants may need to ask for a one-year extension on their minor variance if all the work is not completed on time. The committee noted that the applicants came in for a variance specifically to have the custom boat canopy and were unwilling to reduce the size then, however now they are willing to do so. The new canopy size would not completely cover the applicant’s boat. Kurt noted that the existing property does not have a way to access the lake from the house.

Motion:
- Joe moved to approve the permit. Donna seconded the motion.
  - The motion was approved unanimously 5-0.

STAFF COMMENTS: None.
**BOARD COMMENTS:**
The board wondered what they should do with complaints of violations on the lake. There are many lakeshore regulations not being met. Staff said that all violations should be reported to the Planning Office. The City has a new code enforcement officer, who can help police those violations. However, staff has no way to patrol the lake for violations. Several violations include for sale signs placed on docks. The committee also had questions about regulations regarding floating islands, which are large mats that float freely on the lake or are towed behind boats and are frequently left out throughout the summer season. The committee also mentioned the property at the end of Big Mountain Road. The land along the lake is predominately in the county, and therefore has different regulations in the lakeshore protection zone above low water. The county allows decks and patios in the lakeshore protection zone as well as crib docks. If a building is torn down, they allow an entire reconstruction of that building. It is likely they are taking advantage of these perks before annexing. Any project happening on these properties will be very unlikely to move forward without being annexed into the city to utilize city water and sewer.

**ADJOURNMENT**
The meeting was adjourned at 6:31 pm.

**NEXT MEETING**
October 11, 2017 * 6:00pm
Whitefish City Hall
418 E. 2nd Street – Whitefish, MT
SCOTT & TRACEY GERBER  
WHITEFISH LAKE LAKESHORE PERMIT  
STAFF REPORT #WLP-17-W27  
SEPTEMBER 13, 2017

Property Owner: Scott & Tracey Gerber  
Mailing Address: 48 Parsonage Road  
Greenwich, CT 06830

Applicant: Terra Designworks, LLC  
c/o Kurt Vomfell  
Mailing Address: 427 E. Center Street  
Kalispell, MT 59901

Telephone Number: 406.270.8054  
Contractor: Bear Mountain Builders  
Mailing Address: 623 Woodland Place  
Whitefish, MT 59937

Telephone Number: 406.261.0483  
Property Legal Description: Tract 6ADAC in Section 24, Township 31 North, Range 22 West  

Property Address: 1816 Lacy Lane  
Lake: Whitefish Lake  
Lake Frontage: 87’ per previous permits  

Project Description: Install stone stairs within the Lakeshore Protection Zone.

Proposal: The applicant is proposing one activity within the Lake and Lakeshore Protection Zone, to install stone stairs beginning outside of the LPZ and extending through an approved retaining wall. The installation of the stairs would include approximately five (5) new stepping stones within the LPZ. The stairs will be a maximum of 4 feet wide, and approximately 18 square feet of constructed area.

Previously, the applicant received an approved minor variance to the constructed area allowance for the subject property. The variance granted an additional 83 square feet to the constructed area allowance. As the stone stairs will create an additional 18 square feet of constructed area, the applicant is proposing to reduce that same amount from the approved boat canopy over the shore station. Therefore, the approved variance will remain the same, and no new variance is requested.

Frontage and allowable constructed area: The subject property has 87 feet of lakeshore frontage, and is eligible for 696 square feet of constructed area.

Existing Constructed Area: There is an existing dock on the property approved under WLP-01-W9 for 512 square feet. Under WLP-02-W2 the property was approved for a boat rail system. The third permit for the property was approved under WLP-06-W76 for repairs to a riprap retaining wall. Under WLP-08-W17 a boat house deck was permitted for 35 square feet. Recently, under WLP-17-W02 the property was approved for a shore station with a custom-built canopy for 182.75 square feet. Finally, WLV-17-W03 approved a minor variance to the constructed area. In order
to reduce the overall amount of constructed area requested for the minor variance, the applicant proposed removing the permitted boat house deck, two concrete retaining walls, and the existing boat rail system. This reduced the constructed area to a maximum of approximately 778.8 square feet.

Conclusion: The proposed stairs comply with all requirements, most specifically Section 13-3-1, General Construction Standards of the Whitefish Lake and Lakeshore Regulations.

Recommendation: Staff recommends that the Whitefish Lakeshore Protection Committee recommend approval of the requested lakeshore construction permit to the Whitefish City Council subject to the following conditions.

Recommended Conditions of Approval:

1. This permit is valid for a period of one year from the date of issuance. Upon completion of the work, please contact the Planning Department at 406-863-2410 for final inspection.

2. The Lakeshore Protection Zone shall be defined as the lake, lakeshore and all land within 20 horizontal feet of the average high water line at elevation 3,000.79’.

3. The proposed project dimensions specified on the application project drawing shall not be exceeded unless modified by conditions of the approved permit. Changes or modifications to increase any dimension or change configuration must be approved through a permit amendment.

4. Temporary storage of vehicles, trailers, equipment, or construction materials in the lakeshore protection zone is prohibited.

5. The natural protective armament of the lakeshore and lakebed must be preserved whenever possible. Following installation, the lakeshore and lakebed shall be returned to its condition prior to construction.

6. Prior to the start of any construction activity, an effective siltation barrier shall be installed at the lakeshore protection zone boundary. The barrier shall be designed and constructed to prevent silt and other debris from the construction site entering the lakeshore protection zone, and shall be maintained until such a time as permanent erosion control and site stabilization are established on the property.

7. All work shall be done when the lake is at low pool and the construction site is dry.

8. Any existing or disturbed areas inside the lakeshore zone may be revegetated. New plants shall be native to the Flathead Valley or cultivars whose form, color, texture, and character approximates that of natives. A resource file on native plants is available at the City of Whitefish Planning Department. Application of fertilizer is permitted only in minimal amounts to establish new plantings.

9. All material which is excavated from the Lakeshore Protection Zone shall be removed entirely from the lakeshore protection zone and deposited in such a manner as to prohibit reentry into the lake.

Stone Stairs

10. The stone stairs shall have a maximum width of four feet (4’) and shall be designed to provide access only.
11. The stone stairs shall be located as shown on the application project drawing. The stone/rock used shall be free of silts, sands or fines.

12. Stairways and walkways constructed of impervious material, including dry laid stone, are subject to the maximum allowable constructed area.

13. Cultured or natural stone or rock shall be used for the proposed work within the lakeshore protection zone. The stones or rock to be used shall be dry set.

14. Rock may be handpicked from the immediate lakeshore but removal of said rock shall only be allowed if a solid armament of rock remains in place. The removal of any rock which exposes silts, sands or fines is prohibited.

Report by: Bailey Minnich
LAKESHORE CONSTRUCTION PERMIT APPLICATION

WHITEFISH, BLANCHARD, LOST COON LAKE

FEE ATTACHED $ 350.00

A permit is required for any work, construction, demolition, dock/shorestation/buoy installation, and landscaping or shoreline modification in the lake and lakeshore protection zone – an area extending 20 horizontal feet landward from mean high water of:
- 3,000.79' msl (NAVD 1988) for Whitefish Lake
- 3,104' msl (NAVD 1988) for Lost Coon Lake

INSTRUCTIONS:

☐ Submit the application fee, completed application and appropriate attachments to the Whitefish Planning & Building Department a minimum of three (3) weeks prior to the City Council meeting at which this application will be heard.

☐ The application will be forwarded along with Staff’s recommendation to the next available City Council meeting for final action.

☐ All work will be inspected for conformity with permit. Permits are valid for one year from date of approval and can be renewed by the governing body upon request.

A. LEGAL DESCRIPTION OF PROPERTY:

Street Address 1816 Lacy Lane, Whitefish, MT 59937

How many feet of the lake frontage do you own? 87.0’ (Per Permit WLP-08-W17)

Assessor’s Tract No.(s) 3122X24-XXX-6ADAC Lot No(s) Tract 6ADAC in Gov’t Lot 2

Block # ___________ Subdivision Name Lacy Lane Sub

1/4 Sec ___________ Section 24 Township 31N Range 22W

I hereby certify that the information contained or accompanied in this application is true and correct to the best of my knowledge. The signing of this application signifies approval for the Whitefish Staff to be present on the property for routine monitoring and inspection during the approval and development process.

__________________________
Owner’s Signature

__________________________
Date

Kurt C. Vomfrell

Applicant’s Signature

Kurt Vomfrell - Terra Designworks LLC

Print Name

__________________________
Date

1 May be signed by the applicant or representative, authorization letter from owner must be attached. If there are multiple owners, a letter authorizing one owner to be the authorized representative for all must be included.
APPLICATION CONTENTS:
Attached ALL ITEMS MUST BE INCLUDED - INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

- Lakeshore Construction Permit Application
- Written description how the project meets the criteria in Sections C-F
- Site Plan drawn to scale
- Project Drawing that is drawn to scale
- Vicinity Map
- Minimum of three (3) photos: 1 photo of property from lake; 2 photos showing lakeshore protection zoning from property boundary toward the other property boundary (e.g., from the north property line across property to the south) and photos of each existing structure or constructed area within the lakeshore protection zone (dock, boathouse, stairs, etc.)

B. OWNER(S) OF RECORD:
Name: Scott & Tracy Gerber Phone: 917.287.5629
Mailing Address: 48 Parsonage Rd
City, State, Zip: Greenwich, CT 06830
Email: sgerber@gerberbars.com

APPLICANT (if different than above):
Name: Kurt Vomfell - Terra Designworks LLC Phone: 406.270.8054
Mailing Address: 427 E Center St.
City, State, Zip: Kalispell, MT 59901
Email: kurt@terradesignworks.com

CONTRACTOR:
Name: Bear Mountain Builders, Inc. Phone: 406.261.0483
Mailing Address: 623 Woodland Place
City, State, Zip: Whitefish, MT 59937
Email: kelcey@bearmountainbuilders.com
C. **NATURE OF THE PROPOSED WORK:** (describe what you propose to build, demolish or install. Give dimensions, material and list heavy equipment, if any to be used.)

See attached Exhibit 'A'

D. Describe any Environmental Impacts (e.g. impacts on water quality or fish and wildlife habitat, increased sedimentation, etc.). Explain what measures will be taken to alleviate these impacts.

See attached Exhibit 'A'

E. Describe existing improvements on the property within the lakeshore protection zone along with the square footage of each such as an existing dock, stairs, deck or patio and when they were constructed, if known, or the permit number.

See attached Exhibit 'A'

F. If a variance is requested in addition to this permit, specify the reasons or conditions which require or warrant the variance on a separate variance form. An additional fee is required for a variance request. What is the variance proposal?

N/A
C. Nature of the proposed work:

Activity #1: 4’ Wide Stone Steps

This activity proposes to install 4’ wide stone steps within the lakeshore protection zone for beach access (approximately 18.0 sq. ft. impervious coverage). A minor variance was approved, Permit #WLV-17-W03, for a dry-stack stone retaining wall within the lakeshore protection zone. The proposed stone steps will offset approximately 6.0 sq. ft. of the proposed retaining wall, as the wall will stop on each side of the steps to allow their connection to the beach. Additional impervious cover is not being proposed. The 12.0 sq. ft. that is being proposed will be offset by reducing the size of the proposed boat canopy that was approved under Permit #WLVP-17-W02. The steps proposed in this activity will have a neutral effect on the impervious coverage that has already been approved in previous permits.

Machinery such as a skid steer and/or a small excavator will be used within the lakeshore protection zone to perform demolition and construction activities. Equipment and materials will be staged outside of the lakeshore protection zone. Equipment will not come into contact with lake water.

D. Describe any environmental impacts:

We anticipate no negative environmental impacts as a result of this work. Best management practices, such as straw wattles and silt fences, will be used to prevent lake sedimentation during construction. All disturbed areas will revegetated with native materials as soon as possible following construction activities.

E. Describe existing improvements on the property within the lakeshore protection zone:

Existing Dock (512.0 sq. ft.) per Permit WLP-01-W9 & Permit WLP-17-W02
Existing Lakeshore Permit #WLVP-17-W02 for Custom Canopy (182.75 sq. ft.) & Shore Station Lift
Existing Minor Variance Permit #WLV-17-W03 for Dry-Stack Stone Retaining Wall (184.0 sq. ft.)
Total Existing Impervious Coverage: 778.8 sq. ft.

F. If a variance is requested in addition to this permit, specify the reasons or conditions which require or warrant the variance on a separate variance form.

N/A
**Photo #1**
The lakeshore looking north as seen from near the southern property line. The boat rails to be removed can be seen in this photo.

**Photo #2**
The existing riprap retaining wall that has failed and been repaired can be seen in this photo.

**Photo #3**
The south half of the lakeshore protection zone.

**Photo #4**
The existing nonconforming concrete retaining wall and boat rails that are to be removed can be seen here.
LAKE SHORE & WATER QUALITY PROTECTION APPLICATION
AUTHORIZATION FORM

Project Name: Gerber Lakeshore
Project Address: 1816 Lacy Lane
    Whitefish, MT 59937

For: [x] Lakeshore Construction Permit Application
     [x] Water Quality Protection Permit Application

I/we hereby authorize Terra Designworks LLC to submit all required documents and drawings as the Applicant on our behalf for the purposes of obtaining the above stated permits.

Signature ________________________________  Date ________________________________

Property Owner

Signature ________________________________  Date ________________________________

Property Owner

www.terradesignworks.com

Terra Designworks LLC
Landscape Architecture

427 E Center St
Kalispell, MT 59901
406.270.8054

City Council Packet October 2, 2017   Page 306 of 446
(This page left blank intentionally to separate printed sections)
RESOLUTION NO. 17-___

A Resolution of the City Council of the City of Whitefish, Montana, establishing an administrative processing fee for special event permits.

WHEREAS, §§ 7-1-4123(7) and 7-6-4013, MCA, empower municipalities to impose a fee for the provision of a service and grant municipalities the authority to regulate, establish and change fees and classifications that are imposed for services, which must be reasonable and related to the cost of providing such a service; and

WHEREAS, on August 21, 2017, the Whitefish City Council passed Ordinance No. 17-23, which amended Chapter 4, Special Events Permits, of Title 7 of the Whitefish City Code on second reading; and

WHEREAS, section 7-4-7-A of Ordinance No. 17-23 provides that the City Manager shall charge an applicant for a special event permit an administrative processing fee as established by the City Council by Resolution; and

WHEREAS, as required by § 7-6-4013, MCA, notice of a public hearing before the City Council at its October 2, 2017, meeting with respect to the establishment of an administrative processing fee for special event permits was published on September 20, 2017, and September 27, 2017; and

WHEREAS, staff estimates that the actual cost of staff time spent processing a special event permit is approximately $110; and

WHEREAS, at a lawfully noticed public hearing on October 2, 2017, after receiving public comment, reviewing staff the report, and having considered the cost of staff time spent processing a special event permit, the Whitefish City Council found a $110 fee to be reasonable and related to the cost of issuing a special event permit.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: An administrative processing fee for special event permits in the amount of $110.00 is hereby established.

Section 2: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.


John M. Muhlfeld, Mayor

ATTEST:

Michelle Howke, City Clerk
Staff Report

To: Mayor John Muhlfeld and City Councilors
From: Angela Jacob, City Attorney
Date: September 26, 2017
Re: Administrative Processing Fee for Special Event Permits

Introduction/History

Courts have uniformly held that while a government cannot profit from imposing licensing or permit fees, it can charge a fee intended to cover the administrative cost of issuing the permit or license. Similarly, §§ 7-1-4123(7) and 7-6-4013, MCA, empower municipalities to impose a fee for the provision of a service and grant municipalities the authority to regulate, establish and change fees that are imposed for services, as long as such fees are reasonable and related to the cost of providing such a service.

On August 21, 2017, the City Council passed on second reading Ordinance 17-23, which amended the ordinance governing special event permits. In accordance with statutory and case law, § 7-4-7-A of Ordinance 17-23 provides the City Manager will charge an applicant for a special event permit an administrative processing fee as established by the City Council by resolution.

Current Report

Previously, the City charged a fee for special event permits based upon whether the event was “small,” “annual” or “recurring.” Events were apparently grouped into these three categories based upon the amount of City services required for the event. However, the City Council chose not to adopt a “department services fee” as part of Ordinance 17-23. As such, the fee for a special event permit should reflect only the administrative cost of issuing the permit.

I asked those employees who are involved in processing a special event permit to estimate the amount of time they spent on each application. While certain applications may take more time than others, we were able to arrive at a reasonable estimate. I then used each employee’s hourly rate to estimate the administrative cost to the City. The total cost of processing one special permit application is approximately $110.00.
Financial requirements/Impacts

There will likely be no significant financial impacts of establishing an administrative processing fee. As noted above, the fee is intended to offset the cost to the City of using staff time to process applications.

Recommendation

Staff respectfully recommends the City Council adopt Resolution No. 17-____.
(This page left blank intentionally to separate printed sections)
ORDINANCE NO. 17-__

An Ordinance of the City Council of the City of Whitefish, Montana, rezoning approximately 5.3 acres of land located at 2385 Mountain Shadows Drive in Section 14, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, from County R-3 (One-Family Residential) to Whitefish WR-1 (One-Family Residential District), and adopting findings with respect to such rezone.

WHEREAS, the City of Whitefish initiated a rezone with respect to property located at 2385 Mountain Shadows Drive, and legally described as Lot 14 of Mountain Shadows Subdivision in Section 14, Township 31 North, Range 22 West, Flathead County, Montana; and

WHEREAS, in response to the City-initiated rezone, the Whitefish Planning & Building staff prepared Staff Report WZC 17-16, dated September 14, 2017, which analyzed the proposed rezone and recommended in favor of its approval; and

WHEREAS, at a lawfully noticed public hearing on September 21, 2017, the Whitefish Planning Board reviewed Staff Report WZC 17-16, received an oral report from Planning staff, invited public comment, and thereafter voted to recommend in favor of the proposed zone change; and

WHEREAS, at a lawfully noticed public hearing on October 2, 2017, the Whitefish City Council reviewed Staff Report WZC 17-16 and letter of transmittal, received an oral report from Planning staff, and invited public comment; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the proposed rezone; and

WHEREAS, the proposed rezone meets zoning procedure and the criteria and guidelines for the proposed rezone required by MCA §§ 76-2-303 through 76-2-305 and WCC § 11-7-12.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: Staff Report WZC 17-16, dated September 14, 2017, together with the September 26, 2017 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.

Section 3: The real property located at 2385 Mountain Shadows Drive, and legally described as Lot 14 of Mountain Shadows Subdivision in Section 14, Township 31 North, Range 22 West, previously zoned County R-3 (One-Family Residential) is hereby rezoned to Whitefish WR-1 (One-Family Residential District).

Section 4: The official Zoning Map of the City of Whitefish, Montana, shall be amended, altered and changed to provide that the rezone and zoning map amendment of the real property
identified on the map attached hereto as Exhibit "A", and incorporated herein by reference, shall be designated Whitefish WR-1 (One-Family Residential District). The Zoning Administrator is instructed to change the City's official Zoning Map to conform to the terms of this Ordinance.

Section 5: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 6: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.


__________________________________________
John M. Muhlfeld, Mayor

ATTEST:

__________________________________________
Michelle Howke, City Clerk
The location of the subject property is outlined in red.
September 26, 2017

Mayor and City Council
City of Whitefish
PO Box 158
Whitefish MT  59937

RE:  City of Whitefish Zone Change: WZC 17-16

Honorable Mayor and Council:

**Summary of Requested Action:** This is a request by the City of Whitefish to rezone one parcel annexed into the City from County R-3 (One-Family Residential) to WR-1 (One-Family Residential District). The subject property is located at 2385 Mountain Shadows Drive and totals approximately 5.3 acres in size.
Planning & Building Department Recommendation: Staff recommended approval of the above referenced rezone.

Public Hearing: No members of the public spoke at the public hearing. The draft minutes from the Planning Board for this item are attached to this packet.

Planning Board Action: The Whitefish Planning Board met on September 21, 2017 and considered the requested rezone. Following the public hearing, the Planning Board recommended approval of the above referenced rezone voting 5-1 (Hessellund dissenting) and adopted the staff report as findings of fact.

Proposed Motion:

- I move to approve WZC 17-16 and adopt the Findings of Fact in the staff report, as recommended by the Whitefish Planning Board on September 21, 2017.

This item has been placed on the agenda for your regularly scheduled meeting on October 2, 2017. Should Council have questions or need further information on this matter, please contact the Planning Board or the Planning & Building Department.

Respectfully,

Bailey Minnich, AICP, CFM
Planner II

Att: Draft Minutes of 9-21-17 Planning Board Meeting

Exhibits from 9-14-17 Staff Packet
1. Staff Report – WZC 17-16, 9-14-17
2. Adjacent Landowner Notice, 9-1-17
3. Advisory Agency Notice, 9-1-17
4. Public Comment, 9-11-17
5. Resolution 17-25, 7-17-17

c: w/att Michelle Howke, City Clerk
in this development. The former developer lost this property to the bank and someone new has come in, and she doesn't know what the current owner has planned.

<table>
<thead>
<tr>
<th>APPLICANT / AGENCIES</th>
<th>None.</th>
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<tr>
<th>PUBLIC COMMENT</th>
<th>Chair Qunell opened the public hearing. There being no comment, he closed the public hearing and turned the matter over to the Planning Board for consideration.</th>
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<tr>
<th>MOTION / BOARD DISCUSSION</th>
<th>Ellis moved and Linville seconded to adopt the findings of fact within staff report WZC 17-18 as proposed by City Staff.</th>
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<tr>
<th>VOTE</th>
<th>The motion passed unanimously. The matter is scheduled to go before the Council on October 2, 2017.</th>
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<tr>
<th>PUBLIC HEARING 4: CITY OF WHITEFISH REZONE REQUEST 6:53 pm</th>
<th>A request by the City of Whitefish to rezone one parcel annexed into City limits from County R-3 (One-Family Residential) to WR-1 (One-Family Residential District). The property is located at 2385 Mountain Shadows Drive in S14 T31N R21W.</th>
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<tr>
<th>STAFF REPORT WZC 17-16 (Minnich)</th>
<th>Planner Minnich reviewed her staff report and findings. One comment was received with supporting documents and that was included in the packet. It contains the CC&amp;Rs for the subdivision which state this parcel can be split in half. That is ultimately where this property is headed, and they had to annex in order to get water and sewer service. Staff recommended adoption of the findings of fact within staff report WZC 17-16, and for approval to the Whitefish City Council.</th>
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<tr>
<th>BOARD QUESTIONS OF STAFF</th>
<th>Qunell asked and Minnich said splitting the property will not cause a problem meeting the lot size. This lot is allowed to do it in the WR-1 so when the split it they will meet the lot size. Only two lots in the subdivision can be split and this is one of them. Hessel Lund is concerned that it will become a 10,000 square foot lot versus a 15,000 square foot lot as she thinks it’s already congested. What if all the houses burned down and the CC&amp;Rs were gotten rid of, they could have 10,000 square foot lots. Minnich said they would have to come through subdivision review. Qunell pointed out they are County R-3, so if we go to a bigger lot size, it's a takeaway for us, and would be taking back something the County gave them.</th>
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<tr>
<td><strong>APPLICANT / AGENCIES</strong></td>
<td>None.</td>
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</tr>
<tr>
<td><strong>PUBLIC COMMENT</strong></td>
<td>Chair Qunell opened the public hearing. There being no comment, he closed the public hearing and turned the matter over to the Planning Board for consideration.</td>
</tr>
<tr>
<td><strong>MOTION / BOARD DISCUSSION</strong></td>
<td>Ellis moved and Laidlaw seconded to adopt the findings of fact within staff report WZC 17-16 as proposed by City Staff.</td>
</tr>
<tr>
<td><strong>VOTE</strong></td>
<td>The motion passed 5-1, with Hesselund voting in opposition. The matter is scheduled to go before the Council on October 2, 2017.</td>
</tr>
<tr>
<td><strong>NEW BUSINESS</strong></td>
<td>None.</td>
</tr>
<tr>
<td><strong>7:02 pm</strong></td>
<td></td>
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</tbody>
</table>
| **GOOD AND WELFARE** | 1. Matters from Board. Ellis said he was one of people who had reservations about boarding houses, but he walks by the old school building daily. There are not many cars and not much activity. So far, so good, and he is cautiously optimistic.  
2. Matters from Staff. Taylor reported the Wisconsin Avenue Corridor Plan Committee is continuing to meet, and should be ready to go to the Planning Board in December or January. Wendy reported the Affordable Housing folks were here a couple of weeks ago and made a presentation of options, possibilities, etc., as they work towards completing the Strategic Housing Plan. There will be a draft available at whitefishhousing.com by October 13, and a comment period following. A Work Session will be held before the Council Meeting on November 6.  
3. Poll of Board members available for the next meeting on October 19, 2017. Ellis, Linville, and Hildner will not be available, but all others indicated they thought they would be available. Planning staff said we definitely need a quorum as there will be a lot on the agenda. Hildner will ask Sweeney to attend, and Compton-Ring will check with Norton. |
| **7:03 pm** | |
| **ADJOURNMENT** | Ellis moved and Linville seconded to adjourn the meeting at approximately 7:07 pm. The motion passed unanimously. The next regular meeting of the Whitefish Planning Board is scheduled to be held on October 19, 2017, at 6:00 pm, at 418 East 2nd Street. |
1. Staff Report – WZC 17-16, 9-14-17
2. Adjacent Landowner Notice, 9-1-17
3. Advisory Agency Notice, 9-1-17
4. Public Comment, 9-11-17
5. Rezone Application, 7-11-17
6. Resolution 17-25, 7-17-17
A report to the Whitefish Planning Board and the Whitefish City Council regarding a request by the City of Whitefish to rezone one parcel from County R-3 (One-Family Residential) to WR-1 (One-Family Residential District) along Mountain Shadows Drive. This request is scheduled before the Whitefish Planning Board for public hearing on Thursday, **September 21, 2017** at 6:00 PM. A recommendation will be forwarded to the City Council for a subsequent public hearing on Monday, **October 2, 2017** at 7:10 PM. Both hearings will be held in the Whitefish City Council Chambers.

**PROJECT SCOPE**

The City is requesting a zone change on one parcel from County R-3 (One-Family Residential) to WR-1 (One-Family Residential District). The parcel is located along Mountain Shadows Drive, near the intersection with Birch Glen Road. The parcel is located within the city limits.

The purpose of rezoning the property to a City zone is due to the adoption of Resolution 17-25 which annexed the property into Whitefish City limits on July 17, 2017. As the property is now within the City, the zoning must be changed from a County zoning designation to a City zoning designation.

Figure 1: Location of subject property outlined in red.
Purpose of WR-1: The WR-1 district is intended for residential purposes to provide for single-family dwellings in an urban setting connected to all municipal utilities and services.

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<thead>
<tr>
<th></th>
<th>WR-1 (proposed zoning)</th>
<th>R-3 (existing zoning)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum lot area</td>
<td>10,000 square feet</td>
<td>10,000 square feet</td>
</tr>
<tr>
<td>Front yard setback</td>
<td>25-feet</td>
<td>20-feet</td>
</tr>
<tr>
<td>Side yard setback</td>
<td>10-feet</td>
<td>10-feet (20-feet for side corner)</td>
</tr>
<tr>
<td>Rear yard setback</td>
<td>20-feet</td>
<td>20-feet</td>
</tr>
<tr>
<td>Maximum height</td>
<td>35-feet</td>
<td>35-feet</td>
</tr>
<tr>
<td>Permitted lot coverage</td>
<td>35%</td>
<td>30%</td>
</tr>
</tbody>
</table>

A. Applicant:
City of Whitefish
PO Box 158
Whitefish, MT 59937
B. Location and Size:
The subject property is located at 2385 Mountain Shadows Drive and can be legally described as Lot 14 of Mountain Shadows Subdivision in S14 T31N R22W. The subject property totals approximately 5.3 acres in size.

C. Existing Land Use, Zoning and Growth Policy Designation:
The property is currently developed with a single-family residence. The Growth Policy identifies the parcel as Suburban Residential on the Whitefish City-County Growth Policy Future Land Use Map. The text within the Growth Policy relating to the Suburban Residential classification states this designation is for “lower density residential areas at the periphery of the urban service area…the residential product type is predominantly single-family, but cluster homes and low-density town homes that preserve significant open space are also appropriate. Densities range from one unit per 2 ½ acres to 2.5 units per acre, but could be higher through the PUD. Zoning districts include WCR, WER, and WSR. Cluster residential that preserves considerable open space, allows for limited agriculture, maintains wildlife habitat is encouraged.”

D. Adjacent Land Uses, Zoning and Growth Policy Designations:
- **North:** Residential R-3 Suburban Residential
- **South:** Residential R-3 Suburban Residential
- **East:** Residential R-3 Suburban Residential
- **West:** Residential R-1 & WSR Suburban Residential
E. **Public Notice:**
A notice was mailed to adjacent land owners within 150-feet of the subject parcels on September 1, 2017. Advisory agencies were noticed on September 1, 2017. A notice was published in the Whitefish Pilot on September 6, 2017. As of the writing of this report, one comment with supporting documents has been received.

F. **Utilities:**
- Sewer: City of Whitefish/Private Septic
- Water: City of Whitefish/Private Well
- Solid Waste: North Valley Refuse
- Electric: Flathead Electric Co-op
- Natural Gas: Northwest Energy
- Phone: Centurylink
- Police: City of Whitefish
- Fire: City of Whitefish
- Roads: City of Whitefish

**REVIEW AND FINDINGS OF FACT:**
This request is reviewed in accordance with the Whitefish zoning regulations, Section 11-7-12 and based on statutory criteria on the purposes of zoning (76-2-303 through 305 M.C.A.).
The Whitefish zoning regulations set forth the process for rezoning properties and the considerations that both the Planning Board and the City Council must make in order to approve an amendment. While some of these considerations are not applicable as the existing and proposed zoning districts already address them, several considerations need to be reviewed in light of the proposed zoning district. The following is a review and discussion of considerations applicable to the proposed zoning district.

A. Made in Accordance with a Growth Policy.
The Growth Policy Future Land Use Map designates the parcel within the Suburban Residential designation. This designation indicates it is primarily for WCR, WER, and WSR. The proposed change to WR-1 (One-Family Residential District) zoning is not consistent with the Suburban Residential designation. However, prior to the termination of the inter-local agreement with Flathead County, the property was zoned WLR – also not consistent with the Suburban Residential designation. When the County rezoned the property in 2014, they did not have an equivalent zone to the City’s WLR, so they rezoned to their closest, which was R-3. The City has made the interpretation that if a property is annexed, it should either be rezoned to the same zoning it was prior to the agreement termination or to the closest City equivalent. Since rezoning to the WLR would effectively be downzoning the property, the City is proposing to go WR-1 which is the most similar zone to the County R-3.

Finding 1: While the proposed zone change to WR-1 is not in accordance with the Growth Policy designation of Suburban Residential, it is the most similar to the Flathead County’s zoning designation of R-3.

B. Secure safety from fire, panic and other dangers.
The property is served by the City of Whitefish Police and Fire Departments. Any future development will meet all City requirements for roadway widths and Fire Department standards.

Finding 2: The proposed zone change will secure safety from fire, panic and other dangers because the city standards and zoning standards will be reviewed at the time of development.

C. Promote the public health, public safety and general welfare.
Public services and utilities are available to the property and will be extended to serve the site.

Finding 3: The proposed zone change promotes public interest, health, comfort and general welfare because public services are available to the property.

D. Facilitate the Adequate Provision of Transportation, Water, Sewerage, Schools, Parks and other Public Requirements.
Water and sewer are available along Mountain Shadows Drive, the property is adjacent to a County maintained road, which is paved. The school district will not change due to the recent annexation, and the subject property is located approximately 1.5 miles from Les Mason State Park.
Finding 4: The proposed zone change facilitates the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because it is located inside city limits and is served by all public services and facilities.

E. Reasonable Provision of Adequate Light and Air.

The proposed zoning designation include setbacks, maximum building height and lot coverage. In addition, all construction will require conformance with the Building Code.

Finding 5: The proposed zone change provides reasonable provision of adequate light and air because the zoning and other city standards will prevent the overcrowding of the land through lot coverage, setbacks and conformance with the Building Code.

F. The Effect on Motorized and Non-motorized Transportation Systems.

The property is located in the city limits and is served by Mountain Shadows Drive, a paved County maintained road. The proposed zone change from County R-3 zone to the closely equivalent City WR-1 zone will not have an effect on the motorized and non-motorized transportation systems because the proposed uses in each district are very similar.

Finding 6: The proposed zone change will not have an effect on motorized and non-motorized transportation systems because the property is served by a paved County maintained road, and the proposed uses in each district are very similar.

G. Promotion of Compatible Urban Growth.

The subject property is located in an area identified as Suburban Residential by the Growth Policy’s Future Land Use Map. The Growth Policy designates Suburban Residential as including WCR, WER, and WSR. Prior to the interlocal termination, the property was zoned WLR, which did not comply with the Growth Policy designation. Flathead County rezoned the property to R-3, as they did not have an equivalent zone to the City WLR. Since the subject property has been recently annexed into the Whitefish City limits, the property must be rezoned to an equivalent City zone, which is WR-1. Therefore, the proposed zone change will promote compatible growth for the surrounding area.

Finding 7: The proposed zone change will promote compatible urban growth because the property is served by public services, and the proposed zoning designation is the most equivalent City zone.

H. Consideration to the character of the district and its particular suitability for particular uses.

The character of the district is predominately single family residential. The lot sizes are comparable, and the proposed zoning will be the most equivalent.

Finding 8: The proposed zone change considers the character of the district and its suitability for particular uses because it is a predominately single family neighborhood, the lot sizes are comparable between both zones, and the proposed zoning will be the most equivalent.
I. **Conserving the Value of Buildings.**
The subject property is currently developed with a single-family residence. The WR-1 zoning permits only single-family dwellings. Therefore, the value of surrounding buildings will not be negatively impacted by the proposed zone change.

**Finding 9:** The proposed zone change will conserve the value of buildings because the property is currently developed with a single-family residence, and the value of surrounding buildings will be maintained as the WR-1 zoning permits only single-family residences.

J. **Encouraging the Most Appropriate Use of Land Throughout the Jurisdictional Area.**
As previously stated, the area encompassing the subject property is listed as Suburban Residential in the Whitefish Growth Policy. The proposed zone change to WR-1 would encourage the most appropriate use of land as it would be the most similar to the existing County zone and adjacent properties.

**Finding 10:** The proposed zone change encourages the most appropriate use of land throughout the jurisdictional area because it will be the most similar to adjacent properties.

K. **That Historical Use and Establish Use Patterns and Recent Change in Use Trends will be Weighed Equally and Consideration not be Given One to the Exclusion of the Other.**

**Finding 11:** The proposed zone change is consistent with the historical, established and trending use patterns because the Planning Board and the City Council should consider these patterns when making a decision on the project.

**RECOMMENDATION**
It is recommended that the Whitefish Planning Board adopt staff report WZC 17-16 findings of fact and recommend to the Whitefish City Council the zoning map amendment be approved.
Public Notice of Proposed Land Use Action

The City of Whitefish would like to inform you that on behalf of Joanna King Revocable Trust, the City of Whitefish is proposing to rezone one parcel from County R-3 (One-Family Residential) to WR-1 (One-Family Residential District). The property is currently developed with a single-family residence. The property is located at 2385 Mountain Shadows Drive and can be legally described as Lot 14 of Mountain Shadows Subdivision, in Section 14, Township 31N, Range 22W, P.M.M., Flathead County.

You are welcome to provide comments on the project. Comments can be in written or email format. The Whitefish Planning Board will hold a public hearing for the proposed project request on:

Thursday, September 21st, 2017
6:00 p.m.
Whitefish City Council Chambers, City Hall
418 E. 2nd Street, Whitefish MT 59937

The Whitefish Planning Board will make a recommendation to the City Council, who will then hold a public hearing and take final action on Monday, October 2nd, 2017 at 7:10 p.m., also in the Whitefish City Council Chambers.

On the back of this flyer is a site plan of the project. Additional information on this proposal can be obtained at the Whitefish Planning Department located at 418 E. 2nd Street. The public is encouraged to comment on the above proposals and attend the hearings. Please send comments to the Whitefish Planning Department, PO Box 158, Whitefish, MT 59937, or by phone (406) 863-2410, fax (406) 863-2409 or email at bminnich@cityofwhitefish.org. Comments received by the close of business on Monday, September 11th, 2017, will be included in the packets to the Planning Board members. Comments received after the deadline will be summarized to the Planning Board members at the public hearing.
The regular meeting of the Whitefish Planning Board will be held on Thursday, September 21, 2017 at 6:00 pm in the Whitefish City Council Chambers at 418 E Second Street. During the meeting, the Board will hold a public hearing on the item listed below. Upon receipt of the recommendation from the Planning Board, the Whitefish City Council will hold a subsequent public hearing on Monday, October 2, 2017. City Council meetings start at 7:10 pm at 418 E Second Street in the Whitefish City Council Chambers on the second floor.

1. A request by the City of Whitefish to rezone one parcel annexed into City limits from County R-3 (One-Family Residential) to WR-1 (One-Family Residential District). The property is located at 2385 Mountain Shadows Drive in S14 T31N R21W. WZC 17-16 (Minnich)

2. A request by the City of Whitefish to rezone one parcel to remove the expired Planned Unit Development overlay on the project formerly known as Coldwater Basin to WLR (One-Family Limited Residential District). The property is unaddressed located on Big Mountain Road (Tract 2B) S12 T31N R22W. WZC 17-17 (Compton-Ring)

3. A request by the City of Whitefish to rezone twelve parcels to remove the expired Planned Unit Development overlay on the project formerly known as Lookout Ridge to WRR-1 (Low-Density Resort Residential District) and WA (Agricultural District). The properties are unaddressed, 3301 Big Mountain Road and 3300 Whitefish Lookout Road S12 T31N R22W. WZC 17-18 (Compton-Ring)

4. A request by 95 Karrow llc to rezone three parcels from WI (Industrial and Warehousing District) to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed Use Transitional District) in conformance with the 2015 Highway 93 W Corridor Plan. The properties are located at 95 Karrow Avenue in S36 T31N R22W. WZC 17-19 (Compton-Ring)

Documents pertaining to this agenda item are available for review at the Whitefish Planning & Building Department, 418 E Second Street, during regular business hours and on the City’s webpage: www.cityofwhitefish.org under Planning Board. Inquiries are welcomed. Interested parties are invited to attend the meeting and make known their views and concerns. Comments in writing may be forwarded to the Whitefish Planning & Building Department at the above address prior to the
hearing or via email: dtaylor@cityofwhitefish.org. For questions or further information regarding these proposals, phone 406-863-2410.
From: Bailey Minnich
Sent: Monday, September 11, 2017 11:43 AM
To: Wendy Compton-Ring
Subject: FW: Montana
Attachments: Rich Montana.pdf

FYI – neighbor to King

From: Richard Hock [mailto:richie85253@yahoo.com]
Sent: Monday, September 11, 2017 11:25 AM
To: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Subject: Fw: Montana

Hello Wendy,

Thank You for taking time to speak with me this morning.
I've attached the Notice of Restriction, and original Real Estate contract.
The Notice of Restriction summarizes the agreements, original CCR'S, and amendments to lots 13,14,15, & 16 of Mountain Shadows.
The supporting documents are available from me or the county recorders office upon your request,

Thank You,

Richard Hock
602-315-5700

Show original message
On Monday, September 11, 2017 10:07 AM, Dana Hock <danahock@gmail.com> wrote:

Here is info.
NOTICE OF RESTRICTION

WHEREAS, a Declaration of Conditions, Covenants and Restrictions (the "Original CC&R’s") was recorded June 29, 1994, as Document No. 9418014530, records of Flathead County, Montana, covering property known as: Lots 14, 15, and 16 of MOUNTAIN SHADOWS, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana, and Lot 2 of the Amended Plat of Lot 13, Mountain Shadows, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana (which four Lots are collectively referred to hereinafter as the "Property"); and

WHEREAS, the owners of said Lots 15 and 16 of Mountain Shadows executed and caused to be recorded an Amendment to the Original CC&R’s (the "First Amendment"), which First Amendment was recorded DEC. 23, 1997 as Document No. 199735716410, records of Flathead County, Montana, and provided that, in addition to the restriction in the Original CC&R’s which set forth that the Property was not to be replatted, subdivided or the boundaries altered in any manner which would result in the creation or establishment of more than six (6) lots, said Lot 15 of Mountain Shadows was not to be replatted, subdivided or the boundaries altered in any manner which would result in the creation or establishment of any additional lots; and

WHEREAS, under that certain Real Estate Buy-Sell Agreement and Receipt for Earnest Money (the “Purchase Agreement”) executed by Richard Hock, as Buyer, and Kenneth Russell King and Joanna King, as Sellers (pursuant to which ASRL, a Utah limited partnership, purchased said Lot 16 of Mountain Shadows (Richard Hock having assigned his rights under the Purchase Agreement and with respect to said Lot 16 of Mountain Shadows to said ASRL, a Utah limited partnership, which ASRL Partnership was converted to the undersigned ASRL, LLC by Articles of Conversion dated November 14, 2001, and filed with the State of Utah Department of Commerce on December 13, 2001)), Kenneth Russell King and Joanna King, the current owners of all of the Property except for said Lot 16 of Mountain Shadows, agreed that “Buyer has the right to split the property (Lot 16) to create 2 parcels ... Sellers agree that lot 15 Mountain Shadows will never split but Sellers retain the right to split lot 14”;

NOW, THEREFORE, notice of the foregoing agreement by Kenneth Russell King and Joanna King is hereby given so that the record is clear that said Lot 16 of Mountain Shadows can be split into two lots, said Lot 14 of Mountain Shadows can be split into two lots, said Lot 15 of Mountain Shadows cannot be split, and said Lot 2 of the Amended Plat of Lot 13 of Mountain Shadows cannot be split inasmuch as the splitting of said Lots 14 and 16 will, with said Lot 15 and said Lot 2 of the Amended Plat of Lot 13, create the maximum of six lots allowed by the Original CC&R’s and the First Amendment thereto.
IN WITNESS WHEREOF, this Notice of Restriction has been executed by ASRL, LLC on this 3rd day of May, 2004.

ASRL, LLC

By Richard Hock, Manager

By Dana N. Hock, Manager

STATE OF ARIZONA )
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this 3rd day of May, 2004, by Richard Hock, as a manager of ASRL, LLC, a Utah limited liability company, on behalf of the limited liability company.

Notary Public

My Commission Expires: Sept. 10, 2006

STATE OF ARIZONA )
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this 3rd day of May, 2004, by Dana N. Hock, as a manager of ASRL, LLC, a Utah limited liability company, on behalf of the limited liability company.

Notary Public

My Commission Expires: Sept. 10, 2006
Return To: Richard G. Hock
10311 N. 3rd St.
Paradise Valley, AZ 85253

STATE OF MONTANA
COUNTY OF FLATHEAD

RECORDED IN THE RECORDS OF FLATHEAD COUNTY, STATE OF MONTANA AT THE REQUEST OF ON

May 6, 2016

PAULA ROBINSON, CLERK AND RECORDER
RETURN

DOCUMENT #: 200412616120
INSTRUCTIONS:

☐ Submit the completed application with annexation form and appropriate attachments to the Whitefish City Clerk’s Office.

☐ After annexation, the rezone application will be scheduled at the next available meeting of the City Planning Board, which meets on the third Thursday of each month at 6:00 PM in the City Council Chambers at 1005 Baker Avenue.

☐ After the Planning Board hearing, the application is forwarded with the Board’s recommendation to the next available City Council meeting for hearing and final action.

A. PROJECT INFORMATION:

Project Address:  2385 Mountain Shadows Drive, Whitefish

Assessor’s Tract No.(s) N/A Lot No(s) Lot 14
Block # N/A Subdivision Name Mountain Shadows
Section 14 Township 31N Range 21W

I hereby certify that the information contained or accompanied in this application is true and correct to the best of my knowledge. The signing of this application signifies approval for the Whitefish staff to be present on the property for routine monitoring and inspection during the approval and development process.

[Signature] Date

Owner’s Signature

[Print Name]

Applicant’s Signature

[Print Name]

Representative’s Signature

[Print Name]
APPLICATION CONTENTS:
Attached ALL ITEMS MUST BE INCLUDED - INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

- Zoning Map Amendment – Annexation Application
- Map showing the location and boundaries of the property
- Copy of Approved Resolution annexing property into City limits or Date of City Council Meeting

When all application materials are submitted to the Planning & Building Department, the application will be scheduled for public hearing before the Planning Board and City Council.

B. OWNER(S) OF RECORD:
Name: Joanna King  Phone: 270-7222
Mailing Address: P.O. Box 4366  City, State, Zip: Whitefish, MT 59937
Email: joannamessenger@yahoo.com

APPLICANT:
Name: City of Whitefish  Phone: 406-863-2410
Mailing Address: P.O. Box 158
City, State, Zip: Whitefish, MT 59937

C. State the changing conditions that make the proposed amendment necessary:
The applicants wish to annex into the City, subdivide the lot, and connect the new lot to City services.

----------------- For City Staff Use Only ------------------
RESOLUTION NO. 17-25

A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City approximately 5.36 acres of land known as 2385 Mountain Shadows Drive for which the owner has petitioned for and consented to annexation.

WHEREAS, Joanna King, as Trustee of the JOANNA KING AND KENNETH RUSSELL KING REVOCABLE TRUST, has filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owner of real property representing 50% or more of the total area to be annexed. Therefore, the City Council will consider this petition for annexation pursuant to the statutory Annexation by Petition method set forth in Title 7, Chapter 2, Part 46, Montana Code Annotated; and

WHEREAS, services to the annexed area will be provided according to the City of Whitefish Extension of Services Plan, adopted by the City Council by Resolution No. 09-04 on March 2, 2009, as required by and in conformity with §§ 7-2-4610 and 7-2-4732, MCA, available at the Office of the City Clerk; and

WHEREAS, it is the considered and reasoned judgment of the City Council of the City of Whitefish that the City is able to provide municipal services to the area proposed for annexation. Further, it is hereby determined by the Whitefish City Council to be in the best interest of the City of Whitefish, and the inhabitants thereof, as well as the current and future inhabitants of the area to be annexed described herein, that the area be annexed into the City of Whitefish and it is hereby declared to be the intent of the City of Whitefish that the corporate boundaries of the City of Whitefish be extended to include the boundaries of the area described in the Petition for Annexation within the limits of the City of Whitefish.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The corporate boundaries of the City of Whitefish are hereby extended to annex the boundaries of the area herein described in the Petition for Annexation, according to the map or plat thereof, on file and of record in the Office of the Clerk and Recorder of Flathead County, Montana, legally described as:

LOT 14 OF THE MOUNTAIN SHADOWS, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF FLATHEAD COUNTY, MONTANA.
Section 2: The minutes of the City Council of the City of Whitefish, Montana, incorporate this Resolution.

Section 3: The City Clerk is hereby instructed to certify a copy of this Resolution so entered upon the July 17, 2017 Minutes of the City Council. Further that this document shall be filed with the office of the Clerk and Recorder of Flathead County. Pursuant to § 7-2-4607, MCA, this annexation shall be deemed complete effective from and after the date of the filing of said document with the Flathead County Clerk and Recorder.


ATTEST:

John M. Muhlfeld, Mayor

Michelle Howke, City Clerk
CERTIFICATE AS TO RESOLUTION
AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Whitefish, Montana (the "City"), hereby certify that the attached resolution is a true copy of a resolution entitled: "A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City approximately 5.36 acres of land known as 2385 Mountain Shadows Drive, for which the owner has petitioned for and consented to annexation" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on July 17, 2017, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, Councilors voted unanimously in favor thereof.

WITNESS my hand and seal officially this 17th day of July 2017.

Michelle Howke, City Clerk
PETITION
BEFORE THE CITY COUNCIL
OF THE
CITY OF WHITEFISH

PETITION FOR ANNEXATION TO CITY

Dated this 30th day of June, 2017

The undersigned Property Owner hereby petitions the City Council of the City of Whitefish, pursuant to Section 7-2-4601(3)(a), MCA, requesting annexation of the following real property into the City of Whitefish and to remove the following real property from the Whitefish Fire Service Area.

This petition is pursuant to the Contract Agreement for Annexation and City Water and/or Sanitary Sewer Service dated the 30th day of June, 2017.

Petitioner agrees that this annexation petition is irrevocable, and that the City may act on this petition, and actually accomplish the annexation of such real property, at any time in the future, without limitation. Petitioner has had an opportunity to review the City of Whitefish Plan for Extension of Services applicable to such real property, and Petitioner is satisfied with such Plan.

LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED:

LOT 14 OF MOUNTAIN SHADOWS, SEC 14
T 31 N., R 22 W., P.M.M., FLATHEAD COUNTY

PROPERTY ADDRESS:
2355 MOUNTAIN SHADOWS DR., WHITEFISH
R-3 (COUNTY)

ZONED AS:

Joanna King, Trustee

STATE OF Montana

Joanna King

County of Flathead

On this 30th day of June, 2017 before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Joanna King and ______________, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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

[Signature]

Notary Public
State of Montana
My Commission Expires July 24, 2019
CONTRACT AGREEMENT FOR ANNEXATION AND CITY WATER AND/OR SANITARY SEWER SERVICE

THIS AGREEMENT is entered into as of 30th day of June, 2017, by and between the City of Whitefish, a municipal corporation ("CITY") as grantor of City water and/or sanitary sewer services, and [Name and Name of Trust], as grantee recipient(s) of City water and/or sanitary sewer services, whose mailing address is [Address], with respect to the following facts:

A. CITY owns and operates a municipal water and sanitary sewer system.

B. OWNER is the sole owner of the real property that is legally described below, or as fully disclosed and shown on Exhibit "A" attached and made a part of this Agreement ("OWNER'S REAL PROPERTY"):

LEGAL DESCRIPTION

LOT 14, MOUNTAIN SHADOWS, SEC 14, T31N, R 22 W, P.M.M. FLATHEAD COUNTY

C. OWNER'S REAL PROPERTY is located outside of the current corporate limits of the CITY.

D. OWNER desires to obtain municipal water/sewer service from the CITY to serve OWNER'S REAL PROPERTY.

E. The parties desire to enter into an Agreement pursuant to MCA §§7-13-4312 and 7-13-4314, for the CITY to furnish municipal water and/or sanitary sewer service at rates adopted in accordance with Montana State Law in return for OWNER'S agreement that OWNER'S REAL PROPERTY may be annexed to the corporate limits of the CITY at any time.
In consideration of the performance of the terms and conditions of this Agreement on the part of each party, and pursuant to MCA §§7-13-4312 and 7-13-4314, it is hereby agreed as follows:

(1) **Furnishing of Sewer Services**: The CITY hereby agrees to furnish municipal water and/or sanitary sewer service to OWNER'S REAL PROPERTY. Unless otherwise agreed in writing between the parties, OWNER shall be solely responsible for all costs involved in extending municipal water and/or sanitary sewer service to OWNER'S REAL PROPERTY and connecting OWNER'S REAL PROPERTY to the municipal water and/or sewer system. Nothing in this Agreement shall obligate CITY to pay the costs of right-of-way acquisition, engineering, construction and other related costs involved in extending or connecting municipal water and/or sewer service to OWNER'S REAL PROPERTY.

(2) **Municipal Water and/or Sanitary Sewer Connections**: Upon approval by the CITY Public Works Department of the design and construction of all the municipal water and/or sanitary sewer lines and other facilities necessary to serve OWNER'S REAL PROPERTY, and acceptance of all of such water and/or sewer facilities by the CITY, OWNER will be given permission to connect no more than **zero** connection to the CITY'S municipal water and/or sanitary sewer system. Any additional water and/or sewer connections shall require a new application for service and approval obtained from the CITY Public Works Department.

Upon approval by the CITY Public Works Department, OWNER will be given permission to extend ____ water and sanitary sewer stubs from the municipal sanitary main to the property line of the property described herein. Any additional water and/or sanitary sewer stubs shall require a new application for CITY water and/or sanitary sewer service. Prior to connecting any residential or commercial building or any other structure to the water and/or sanitary sewer service stub-out(s), a request must be submitted to CITY for municipal water and/or sanitary sewer service describing the use of the building proposed to be connected. Any connections must comply with the Rules and Regulations for the City of Whitefish Water, Wastewater and Garbage Utility. The request is to be reviewed and approved by CITY prior to any connection of a residential or commercial building, or other structure. No residential or commercial building or any other structure shall be allowed to connect to the municipal water and/or sanitary sewer service extension unless approval has first been obtained from the CITY Public Works Department.

(3) **Transfer of Title**: Within thirty (30) days of the completion of the construction and CITY acceptance of the said water and/or sanitary sewer extension, OWNER hereby agrees to transfer, or cause to be transferred to CITY by appropriate documents any right, title and interest that OWNER may have in the municipal water and/or sanitary sewer lateral and main extensions to be built by OWNER to provide service to the herein described property.

OWNER agrees that the municipal water and/or sanitary sewer line extension to the property shall be constructed in a public right-of-way or on land either owned by OWNER or subject to an appropriate easement approved by CITY, granting OWNER, CITY, and their successors and assigns the right to construct, repair, and maintain the sanitary sewer extension lines. If any portion of the lateral extension is constructed on land owned by OWNER at the time OWNER transfers their interest in the sanitary sewer extension line to the CITY, they shall also grant the CITY an
appropriate easement for construction, repair, and maintenance of the municipal water and/or sanitary sewer extension lines. The CITY shall not be required to accept any previously constructed water or sewer lines unless they are properly located in the right-of-way or a valid easement.

(4) **Maintenance:** Upon completion and acceptance of construction and the approval of access to the municipal water and/or sanitary sewer lines constructed in easements, maintenance, and repair of the mains servicing OWNER'S REAL PROPERTY shall become and remain the responsibility of CITY. Maintenance and repair of the lateral service lines serving the OWNER'S REAL PROPERTY shall become and remain the responsibility of the OWNER.

(5) **Rates, Rules and Policies:** OWNER agrees to pay to the CITY such charges, rates, and fees, including but not limited to connection fees and impact fees, as are established by the CITY in accordance with Montana Law. In addition, OWNER agrees to comply with and be subject to all of the CITY'S rules, regulations and policies, as amended from time to time, with respect to the operation of the CITY'S municipal water and/or sanitary sewer system.

(6) **Consent to Annexation:** OWNER acknowledges and agrees that the CITY is willing to provide municipal water and/or sanitary sewer services only if OWNER provides all of the promises and representations contained in this Agreement. Pursuant to MCA §7-13-4314, the CITY requires that any person, firm, or corporation outside of the incorporated CITY limits is required, as a condition to initiate such service(s), to consent to and petition for annexation of the tract served by the CITY, and in consideration for the CITY'S agreement to provide municipal water and/or sanitary sewer service, OWNER agrees to consent to annexation under the following conditions and in the following manner:

a) OWNER hereby irrevocably consents to the annexation of OWNER'S REAL PROPERTY, and OWNER irrevocably waives any right of protest to any annexation proceedings initiated by the CITY. OWNER agrees that the CITY may initiate annexation of OWNER'S REAL PROPERTY, relying upon this consent and waiver of protest, at any time in the future, without limitation. OWNER acknowledges that, but for this waiver, OWNER would have a right to protest the annexation of OWNER'S REAL PROPERTY.

b) OWNER hereby petitions to have OWNER'S REAL PROPERTY annexed to the CITY, pursuant to MCA §7-2-4601, *et seq.* OWNER agrees that the CITY may act on this petition at any time in the future, without limitation. OWNER furthermore expressly waives the provisions of MCA §7-2-4608, which provides, in effect, that no property used for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purposes or for any purpose incident thereto shall be annexed pursuant to the provisions of MCA §7-2-4601, *et seq.*

c) OWNER hereby signs the petition requesting annexation attached to and made a part hereof under this Agreement for municipal water and/or sanitary sewer services at the time of signing this Agreement. Such Petition shall be filed with the City Clerk.
d) OWNER acknowledges and agrees that OWNER has had an opportunity to inspect the contents of the CITY'S Plan for Extension of Services, as adopted by the CITY, and which describes the manner in which CITY services may be extended to properties annexed by the CITY. OWNER acknowledges and agrees that OWNER is satisfied with the CITY'S Plan for Extension of Services, and that the CITY'S Plan for Extension of Services adequately provides for the extension of CITY services to OWNER'S REAL PROPERTY. OWNER hereby waives the right to object or otherwise challenge the CITY'S Plan for Extension of Services.

e) OWNER hereby irrevocably waives for all time the right to file an action in court to challenge, for any reason, the CITY'S annexation of OWNER'S REAL PROPERTY, whether such annexation occurs now or in the future.

f) OWNER acknowledges and agrees that all of OWNER'S REAL PROPERTY, as described above, will clearly and immediately, and not merely potentially, be serviced by the municipal water and/or sanitary sewer service to be provided by the CITY pursuant to this Agreement.

g) OWNER agrees that if ever OWNER, their heirs, assigns, successors, purchasers, administrators, personal representatives or subsequent holders of title to OWNER'S REAL PROPERTY, breach, challenge, disregard, or otherwise violate any of the terms of this Agreement, the CITY may, after providing twenty (20) days written notice, terminate water and/or sanitary sewer services to OWNER'S REAL PROPERTY, in addition to any other remedies that the CITY may have.

h) OWNER agrees that if OWNER, in violation of this Agreement, submits a protest to the annexation of OWNER'S REAL PROPERTY, the CITY may disregard such protest, in addition to any other remedies that the CITY may have.

i) The promises, covenants, representations, and waivers provided pursuant to this Agreement are voluntarily and knowingly given, with full knowledge of the OWNER'S legal rights. OWNER acknowledges and agrees that it is has had an opportunity to consult with legal counsel of its choice regarding the provisions of this Agreement.

(7) **Recording; Binding Effect:** OWNER agrees that this entire Agreement shall be recorded in the office of the Clerk and Recorder of Flathead County, and OWNER agrees that this Agreement shall run to, with, and be binding upon OWNER'S REAL PROPERTY and OWNER'S title to such real property, and shall be binding upon the OWNER'S heirs, assigns, successors, administrators, personal representatives and any and all subsequent holders or owners of OWNER'S REAL PROPERTY.

(8) **Future Deeds:** Subsequent to this Agreement all deeds to parcels of land within the property subject to this Agreement granted by OWNER shall contain the following consent to annexation and waiver:

*Agreement for Annexation and City Water and/or Sanitary Sewer Service*
The Owner hereby covenants and agrees that acceptance of this deed does constitute a waiver of the statutory right of protest against any annexation procedure initiated by the City of Whitefish with respect to the property described herein. Owner also agrees that acceptance of a deed constitutes an obligation on the part of Owner to initiate annexation procedures per the Petition to Annex on file at the City Clerk’s Office.

This consent to annexation and waiver shall run with the land and shall forever be binding upon the Owner, transferees, successors and assigns.

OWNER agrees that this Agreement shall be binding even if OWNER fails to include the language set forth above in future deeds. After annexation of OWNER’S REAL PROPERTY, future deeds need not contain the language set forth above.

(9) **Term:** This Agreement shall be in perpetuity.

(10) **Entire Agreement:** This Agreement contains the entire agreement between the parties and any additional agreement hereafter made shall be ineffective to alter, change, modify or discharge it in whole or in part, unless such additional agreement is in writing and signed by the parties hereto.

(11) **Partial Invalidity:** Each term, covenant, condition or provision of this Agreement shall be viewed as separate and distinct, and in the event that any such term, covenant, condition or provision shall be held by a court of competent jurisdiction to be invalid, the remaining provisions shall continue in full force and effect.

(12) **Necessary Acts:** Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

OWNER(S)

[Signature]

[Printed Name]

CITY OF WHITEFISH

By: [Signature]

Charles C. Stearns, City Manager

ATTEST:

Michelle Howke, City Clerk

Agreement for Annexation and
City Water and/or Sanitary Sewer Service

Page 5
STATE OF Montana )
County of Flathead ) ss.

On this 31st day of June , 2017, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared [Names redacted] and [Names redacted], known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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

[Signature]

DANIEL P BRIEN
NOTARY PUBLIC for the State of Montana Residing at Somers, Montana My Commission Expires July 24, 2019

STATE OF MONTANA )
County of Flathead ) ss.

On this 10th day of July, 2017, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared CHARLES C. STEARNS, and MICHELLE HOWKE, to me known to be the City Manager and City Clerk respectively of the City of Whitefish, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the City of Whitefish for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the City of Whitefish.

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

[Signature]

KENI HOPKINS
NOTARY PUBLIC for the State of Montana Residing at Columbia Falls, Montana My Commission Expires November 06, 2018

Agreement for Annexation and City Water and/or Sanitary Sewer Service
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ORDINANCE NO. 17-___

An Ordinance of the City Council of the City of Whitefish, Montana, removing a Planned Unit Development overlay on approximately 27 acres of land along Big Mountain Road known as Tract 2B in Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, and reverting the property to its original zoning of Whitefish WLR (One-Family Limited Residential District), and adopting findings.

WHEREAS, the City of Whitefish initiated a request to remove the expired Planned Unit Development overlay on the project formerly known as Coldwater Basin with respect to one parcel of property located along Big Mountain Road, and legally described as Tract 2B in Section 12, Township 31 North, Range 22 West, Flathead County, Montana; and

WHEREAS, in response to the City-initiated request to remove the expired Planned Unit Development overlay and revert the property to its original zoning, the Whitefish Planning & Building staff prepared Staff Report WZC 17-17, dated September 14, 2017, which analyzed the proposed rezoning and recommended in favor of its approval; and

WHEREAS, at a lawfully noticed public hearing on September 21, 2017, the Whitefish Planning Board reviewed Staff Report WZC 17-17, received an oral report from Planning staff, invited public comment, and thereafter voted to recommend in favor of the proposed zone change; and

WHEREAS, at a lawfully noticed public hearing on October 2, 2017, the Whitefish City Council reviewed Staff Report WZC 17-17 and letter of transmittal, received an oral report from Planning staff, and invited public comment; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to revert the property to its original zoning of Whitefish WLR (One-Family Limited Residential District); and

WHEREAS, the proposed rezone meets zoning procedure and the criteria and guidelines for the proposed rezone required by MCA §§ 76-2-303 through 76-2-305 and WCC § 11-7-12.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: Staff Report WZC 17-17, dated September 14, 2017, together with the September 26, 2017 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.

Section 3: The real property located along Big Mountain Road, and legally described as Tract 2B in Section 12, Township 31 North, Range 22 West, previously zoned Whitefish
WPUD/WLR (One-Family Limited Residential District with a Planned Unit Development overlay) hereby reverts to Whitefish WLR (One-Family Limited Residential District).

Section 4: The official Zoning Map of the City of Whitefish, Montana, shall be amended, altered and changed to provide that the reversion and zoning map amendment of the real property identified on the map attached hereto as Exhibit "A", and incorporated herein by reference, shall be designated Whitefish WLR (One-Family Limited Residential District). The Zoning Administrator is instructed to change the City's official Zoning Map to conform to the terms of this Ordinance.

Section 5: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 6: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.


______________________________
John M. Muhlfeld, Mayor

ATTEST:

______________________________
Michelle Howke, City Clerk
The location of the subject property is outlined in purple.
September 26, 2017

Mayor and City Council  
City of Whitefish  
PO Box 158  
Whitefish MT  59937  

RE:  City of Whitefish Zone Change: WZC 17-17  

Honorable Mayor and Council:  

Summary of Requested Action: This is a request by the City of Whitefish to rezone one parcel with the zoning designation of WLR/WPUD (One-Family Limited Residential District with a Planned Unit Development overlay) to WLR (One-Family Limited Residential District) in order to remove an expired PUD overlay. The subject property is off Big Mountain Road and total approximately 27 acres.

Planning & Building Department Recommendation: Staff recommended approval of the above referenced rezone.
Public Hearing: No one from the public. The draft minutes from the Planning Board for this item are attached to this packet.

Planning Board Action: The Whitefish Planning Board met on September 21, 2017 and considered the requested rezone. Following the public hearing, the Planning Board unanimously recommended approval of the above referenced rezone and adopted the staff report as findings of fact.

Proposed Motion:

- I move to approve WZC 17-17 and adopt the Findings of Fact in the staff report, as recommended by the Whitefish Planning Board on September 21, 2017.

This item has been placed on the agenda for your regularly scheduled meeting on October 2, 2017. Should Council have questions or need further information on this matter, please contact the Planning Board or the Planning & Building Department.

Respectfully,

Wendy Compton-Ring, AICP
Senior Planner

Att: Draft Minutes of 9-21-17 Planning Board Meeting

Exhibits from 2-19-17 Staff Packet
1. Staff Report – WZC 17-17, 9-14-17
2. Adjacent Landowner Notice, 9-1-17
3. Advisory Agency Notice, 9-1-17
4. Email, Knutson, 9-6-17
5. Rezone Application, 9-1-17

c: w/att Michelle Howke, City Clerk
Linville asked and Compton-Ring said the list provided by Citizens for a Better Flathead is development specific, not zone-change related. A zone change request doesn't grant a use variance.

Qunell said this is a very sensitive site with a lot of River frontage so it is important that we develop this area in a much better way than the old timber company that is out there. We need to develop it in a way that respects the values of our town and provides a nicer entrance to our City. There will be a lot more time before there is anything developed there and a lot more hearings before that happens. The zone change is the first step and we can't start talking about it until we get the zone change, because if we don’t change the zone, they could build another timber company there if they wanted.

Linville said she appreciates the time that went into the list of questions and once there is a development proposal, she suggests Citizens for a Better Flathead come back and make their questions more specific.

**VOTE**

The motion passed unanimously. The matter is scheduled to go before the Council on October 2, 2017.

**PUBLIC HEARING 2:**

CITY OF WHITEFISH
REZONE REQUEST
6:45 pm

A request by the City of Whitefish to rezone one parcel to remove the expired Planned Unit Development overlay on the project formerly known as Coldwater Basin to WLR (One-Family Limited Residential District). The property is unaddressed and located on Big Mountain Road (Tract 2B) in T12 S31R22W.

**STAFF REPORT**

WZC 17-17
(Compton-Ring)

Senior Planner Compton-Ring reviewed her staff report and findings. Recently there have been some court cases across the country, not specifically in Montana, that in order to remove a PUD from an expired project, you need to go back through a public process. Our City Attorney advised that moving forward they take these back through a public review even though they've expired, so it's more of a housekeeping matter, and in the draft updated PUD chapter this has been included as a new provision. The Coldwater Basin project expired in 2013, and there is no development proposal with this zone request. One email was received regarding future development of this site, which was included in the packet.

Staff recommended adoption of the findings of fact within staff report WZC 17-17, and for approval to the Whitefish City Council.
**BOARD QUESTIONS OF STAFF**

Qunell asked and Compton-Ring said it has been added in the new PUD recommendations to have expired projects go back through public review to have the zone changed back to the underlying zone after it expires, so we will probably be seeing more of these.

Linville asked and Compton-Ring said this is like a step back from potential development since it is expired, so if someone was going to develop it they would have to reapply for the PUD. If anyone was proposing a subdivision on this property, they would notice the adjacent landowners, hold a public hearing and go to City Council. All of the PUD considerations are wiped out after this, the plat is expired, and they would be starting all over.

**APPLICANT / AGENCIES**

None.

**PUBLIC COMMENT**

Chair Qunell opened the public hearing. There being no comment, he closed the public hearing and turned the matter over to the Planning Board for consideration.

**MOTION / BOARD DISCUSSION**

Hildner moved and Linville seconded to remove the expired Coldwater Basin Planned Unit Development overlay, and adopt the findings of fact within staff report WZC 17-17 as proposed by City Staff.

**VOTE**

The motion passed unanimously. The matter is scheduled to go before the Council on October 2, 2017.

**PUBLIC HEARING 3: CITY OF WHITEFISH REZONE REQUEST**

A request by the City of Whitefish to rezone twelve parcels to remove the expired Planned Unit Development overlay on the project formerly known as Lookout Ridge to WRR-1 (Low-Density Resort Residential District) and WA (Agricultural District). The properties are unaddressed, 3301 Big Mountain Road and 3300 Whitefish Lookout Road in S12 T31N R22W.

**STAFF REPORT WZC 17-18 (Compton-Ring)**

Senior Planner Compton-Ring reviewed her staff report and findings. No comments have been received.

Staff recommended adoption of the findings of fact within staff report WZC 17-18, and for approval to the Whitefish City Council.

**BOARD QUESTIONS OF STAFF**

Qunell asked and Compton-Ring said when we approve a PUD and improvements are made but then the development isn't completed, the developer doesn't have to restore the property. A City road was not put
A report to the Whitefish Planning Board and the Whitefish City Council regarding a request by the City of Whitefish to remove the expired Planned Unit Development overlay on the project formerly known as Coldwater Basin to WLR (One-Family Limited Residential District). This request is scheduled before the Whitefish Planning Board for public hearing on Thursday, September 21, 2017 at 6:00 PM. A recommendation will be forwarded to the City Council for a subsequent public hearing on Monday, October 2, 2017 at 7:10 PM. Both hearings will be held in the Whitefish City Council Chambers.

PROJECT SCOPE
The City is proposing to rezone one parcel to remove the expired Planned Unit Development overlay on the project formerly known as Coldwater Basin to WLR (One-Family Limited Residential District). The property is currently undeveloped and is zoned WPUD/WLR (One-Family Limited Residential District with a Planned Unit Development overlay). The parcel is located within the city limits.

The purpose of rezoning is a housekeeping matter to remove the expired PUD from the parcel. The project formerly known as Coldwater Basin expired on June 18, 2013. As part of this subdivision, the Whitefish City Council approved a Planned Unit Development (PUD) overlay. To remove the expired PUD overlay, the City has initiated a rezone to revert the property back to its original zoning. The current zoning is WLR/WPUD and the request will rezone the property to WLR – leaving the underlying zoning in place. There are no development plans with this rezone request.

Purpose of WLR: The WLR district is intended for residential purposes to provide for single-family homes in a low-density setting, connected to municipal utilities and services.

<table>
<thead>
<tr>
<th>WLR (proposed zoning)</th>
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<tbody>
<tr>
<td>Minimum lot area: 15,000 s.f.</td>
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<tr>
<td>Front yard setback: 25-feet</td>
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<tr>
<td>Side yard setback: 15-feet</td>
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<tr>
<td>Rear yard setback: 20-feet</td>
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<tr>
<td>Maximum height: 35-feet</td>
</tr>
<tr>
<td>Permitted lot coverage: 30%</td>
</tr>
</tbody>
</table>

A. Applicant: City of Whitefish
PO Box 158
Whitefish, MT 59937

Property Owner: Glacier Ranch Holdings llc
620 Shelby St
Bristol, TN 37620
B. **Location and Size:**
The subject property is located along Big Mountain Road and can be legally described as Tract 2B in S12 T31N R22W. The subject property is approximately 27 acres.

C. **Existing Land Use, Zoning and Growth Policy Designation:**
The property is undeveloped. The Growth Policy identifies the parcel as Suburban Residential on the Whitefish City-County Growth Policy Future Land Use Map. The text within the Growth Policy relating to the Suburban Residential classification states this designation is “Lower density residential areas at the periphery of the urban service area generally fall under this designation on the Future Land Use Map. The residential product type is predominantly single-family, but cluster homes and low-density town homes that preserve significant open space are also appropriate. Densities range from one unit per 2 ½ acres to 2.5 units per acre, but could be higher through the PUD. Zoning districts include WCR, WER, and WSR. Cluster residential that preserves considerable open space, allows for limited agriculture, maintains wildlife habitat is encouraged.”
D. **Adjacent Land Uses, Zoning and Growth Policy Designations:**

North: Residential R-3 Suburban Residential

South: Residential SAG-10/R-3 Suburban Residential

East: Residential R-3 Suburban Residential

West: Residential WRR-1/WPUD Resort Residential

E. **Public Notice:**

A notice was mailed to adjacent land owners within 150-feet of the subject parcels on September 1, 2017. Advisory agencies were noticed on September 1, 2017. A notice was published in the Whitefish Pilot on September 6, 2017. As of the writing of this report, one public comment was received with concerns about future development of the property.
F. Utilities:
Sewer: City of Whitefish
Water: City of Whitefish
Solid Waste: North Valley Refuse
Electric: Flathead Electric Co-op
Natural Gas: Northwest Energy
Phone: Centurylink
Police: City of Whitefish
Fire: City of Whitefish
Roads: State of Montana

REVIEW AND FINDINGS OF FACT:
This request is reviewed in accordance with the Whitefish zoning regulations, Section 11-7-12 and based on statutory criteria on the purposes of zoning (76-2-303 – 305 M.C.A.).

The Whitefish zoning regulations set forth the process for rezoning properties and the considerations that both the Planning Board and the City Council must make in order to approve an amendment. While some of these considerations are not applicable as the existing and proposed zoning districts already address them, several considerations need to be reviewed in light of the proposed zoning district. The following is a review and discussion of considerations applicable to the proposed zoning district.

A. Made in Accordance with a Growth Policy.
The Growth Policy Future Land Use Map designates the parcels within the Suburban Residential designation. The proposed change to WLR (One-Family Limited Residential District) zoning is not consistent with the Suburban Residential designation; however, this rezone request is simply removing the expired PUD overlay.

Finding 1: The proposed zone change to WLR does not comply with the Suburban Residential land use designation because WLR conforms to the Urban designation. However, this request is to simply remove the expired PUD overlay.

B. Secure safety from fire, panic and other dangers.
The property is served by the City of Whitefish Police and Fire Departments. Any future development will meet all City requirements for roadway widths and Fire Department standards.

Finding 2: The proposed zone change will secure safety from fire, panic and other dangers because the city standards and zoning standards will be reviewed at the time of development.

C. Promote the public health, public safety and general welfare.
Public services and utilities are near the property and will be extended to serve the site.

Finding 3: The proposed zone change promotes public interest, health, comfort and general welfare because public services are available to the property or are nearby.
D. **Facilitate the Adequate Provision of Transportation, Water, Sewerage, Schools, Parks and other Public Requirements.**

Water and sewer are nearby available, the properties are adjacent to a state maintained road, which is paved. The school district will not change due to the rezone as there is no development proposal at this time.

**Finding 4:** The proposed zone change facilitates the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because it is located inside city limits and is served by all public services and facilities.

E. **Reasonable Provision of Adequate Light and Air.**

The proposed zoning designation includes setbacks, maximum building height and lot coverage. In addition, all construction will require conformance with the Building Code.

**Finding 5:** The proposed zone change provides reasonable provision of adequate light and air because the zoning and other city standards will prevent the overcrowding of the land through lot coverage, setbacks and conformance with the Building Code.

F. **The Effect on Motorized and Non-motorized Transportation Systems.**

The property is located in the city limits and is served by Big Mountain Road, a paved State-maintained road. The proposed zone change from WLR/WPUD zone to WLR will not have an effect on the motorized and non-motorized transportation systems because the rezoning is simply removing the expired PUD overlay.

**Finding 6:** The proposed zone change will not have an effect on motorized and non-motorized transportation systems because the rezoning is simply removing the expired PUD overlay.

G. **Promotion of Compatible Urban Growth.**

The subject property is located in an area identified as Suburban Residential by the Growth Policy’s Future Land Use Map. The Growth Policy designates Suburban Residential as including WCR, WER, and WSR zoning. This request is to simply remove the expired PUD overlay; therefore, the proposed zone change will promote compatible growth for the surrounding area.

**Finding 7:** The proposed zone change will promote compatible urban growth because the properties are served by public services, and the proposed zoning designation is the most equivalent City zone.

H. **Consideration to the character of the district and its particular suitability for particular uses.**

The character of the district is predominately single family residential. The lot sizes are comparable, and the proposed zoning will be the most equivalent.

**Finding 8:** The proposed zone change considers the character of the district and its suitability for particular uses because it is a predominately single-family neighborhood, the lot sizes are comparable between both zones, and the proposed zoning will be the most equivalent.
I. **Conserving the Value of Buildings.**
The subject property is currently vacant land. The WLR zoning permits only single-family dwellings. Therefore, the value of surrounding buildings will not be negatively impacted by the proposed zone change.

**Finding 9:** The proposed zone change will conserve the value of buildings because the properties are currently undeveloped, and the value of surrounding buildings will be maintained as the WLR zoning permits only single-family residences.

J. **Encouraging the Most Appropriate Use of Land Throughout the Jurisdictional Area.**
As previously stated, the area encompassing the subject properties is listed as Suburban Residential in the Whitefish Growth Policy. The proposed zone change to WLR would encourage the most appropriate use of land as it is simply removing the expired PUD overlay and retaining the existing WLR zoning designation.

**Finding 10:** The proposed zone change encourages the most appropriate use of land throughout the jurisdictional area because it is simply removing the expired PUD overlay.

K. **That Historical Use and Establish Use Patterns and Recent Change in Use Trends will be Weighed Equally and Consideration not be Given One to the Exclusion of the Other.**

The property was previously zoned WLR and a PUD overlay was approved that considered the historical use and established patterns. This rezone is simply a housekeeping matter to remove the PUD overlay.

**Finding 11:** The Planning Board and the City Council should consider the historical and established use patterns, including trends, when making a decision on the rezone.

**RECOMMENDATION**
It is recommended that the Whitefish Planning Board adopt staff report WZC 17-17 findings of fact and recommend to the Whitefish City Council the zoning map amendment be **approved.**
Public Notice of Proposed Land Use Action

The City of Whitefish would like to inform you that the City is proposing to rezone one parcel to remove the expired Planned Unit Development overlay on the project formerly known as Coldwater Basin to WLR (One-Family Limited Residential District). The property is currently undeveloped and is zoned WPUD/WLR (One-Family Limited Residential District with a Planned Unit Development overlay). There is no development proposal for this property with this request. The property is located on Big Mountain Road, is unaddressed and can be legally described as Tract 2B in S12 T31N R22W P.M.M., Flathead County.

You are welcome to provide comments on the project. Comments can be in written or email format. The Whitefish Planning Board will hold a public hearing for the proposed project request on:

**Thursday, September 21, 2017**
6:00 p.m.
Whitefish City Council Chambers, City Hall
1005 Baker Avenue, Whitefish MT 59937

The Whitefish Planning Board will make a recommendation to the City Council, who will then hold a public hearing and take final action on **Monday, October 2, 2017** at 7:10 p.m., also in the Whitefish City Council Chambers.

On the back of this flyer is a site plan of the project. Additional information on this proposal can be obtained at the Whitefish Planning Department located at 510 Railway Street. The public is encouraged to comment on the above proposals and attend the hearings. Please send comments to the Whitefish Planning Department, PO Box 158, Whitefish, MT 59937, or by phone (406) 863-2410, fax (406) 863-2409 or email at wcompton-ring@cityofwhitefish.org. Comments received by the close of business on Monday, September 11, 2017, will be included in the packets to the Planning Board members. Comments received after the deadline will be summarized to the Planning Board members at the public hearing.
Date: September 1, 2017

To: Advisory Agencies & Interested Parties

From: Whitefish Planning & Building Department

The regular meeting of the Whitefish Planning Board will be held on Thursday, September 21, 2017 at 6:00 pm in the Whitefish City Council Chambers at 418 E Second Street. During the meeting, the Board will hold a public hearing on the item listed below. Upon receipt of the recommendation from the Planning Board, the Whitefish City Council will hold a subsequent public hearing on Monday, October 2, 2017. City Council meetings start at 7:10 pm at 418 E Second Street in the Whitefish City Council Chambers on the second floor.

1. A request by the City of Whitefish to rezone one parcel annexed into City limits from County R-3 (One-Family Residential) to WR-1 (One-Family Residential District). The property is located at 2385 Mountain Shadows Drive in S14 T31N R21W. WZC 17-16 (Minnich)

2. A request by the City of Whitefish to rezone one parcel to remove the expired Planned Unit Development overlay on the project formerly known as Coldwater Basin to WLR (One-Family Limited Residential District). The property is unaddressed located on Big Mountain Road (Tract 2B) S12 T31N R22W. WZC 17-17 (Compton-Ring)

3. A request by the City of Whitefish to rezone twelve parcels to remove the expired Planned Unit Development overlay on the project formerly known as Lookout Ridge to WRR-1 (Low-Density Resort Residential District) and WA (Agricultural District). The properties are unaddressed, 3301 Big Mountain Road and 3300 Whitefish Lookout Road S12 T31N R22W. WZC 17-18 (Compton-Ring)

4. A request by 95 Karrow llc to rezone three parcels from WI (Industrial and Warehousing District) to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed Use Transitional District) in conformance with the 2015 Highway 93 W Corridor Plan. The properties are located at 95 Karrow Avenue in S36 T31N R22W. WZC 17-19 (Compton-Ring)

Documents pertaining to this agenda item are available for review at the Whitefish Planning & Building Department, 418 E Second Street, during regular business hours and on the City’s webpage: www.cityofwhitefish.org under Planning Board. Inquiries are welcomed. Interested parties are invited to attend the meeting and make known their views and concerns. Comments in writing may be forwarded to the Whitefish Planning & Building Department at the above address prior to the
hearing or via email: dtaylor@cityofwhitefish.org. For questions or further information regarding these proposals, phone 406-863-2410.
Greetings people of Whitefish. I have lived next to the area (Tract 2B) for 17 years and have watched multiple herds of elk on that land. It's a natural corridor for them. It would be a shame to have it continue as WLR. If you researched it, I believe you would find it is more of an environmentally sensitive area for elk, has slopes that would require considerable excavation to build on and is part of a greater water system. It would be much more environmentally friendly to space out the homes built there so the elk would not be displaced. Also, a safe road in and out of that property should be key to any development. Thanks for your time.

Nicholas Knutson
2231 Cedar Lane
Big Mountain, Montana
ZONING MAP AMENDMENT

FEE ATTACHED $ n/a
(See current fee schedule)

INSTRUCTIONS:

☐ A pre-application meeting with planning staff is required. Date of pre-application meeting:

☐ Submit the application fee, completed application and appropriate attachments to the Whitefish Planning & Building Department a minimum of forty five (45) days prior to the Planning Board meeting at which this application will be heard.

☐ The regularly scheduled meeting of the Whitefish City Planning Board is the third Thursday of each month at 6:00 PM in the City Council Chambers at 1005 Baker Avenue.

☐ After the Planning Board hearing, the application is forwarded with the Board’s recommendation to the next available City Council meeting for hearing and final action.

A. PROJECT INFORMATION:

Project Address: unaddressed

Assessor’s Tract No.(s) 0611730 Lot No(s) Tracts 2B
Block # Subdivision Name
Section 12 Township 31 Range 22

I hereby certify that the information contained or accompanied in this application is true and correct to the best of my knowledge. The signing of this application signifies approval for the Whitefish staff to be present on the property for routine monitoring and inspection during the approval and development process.

Owner’s Signature1 Date

Glacier Ranch Holdings llc
Print Name

Applicant’s Signature Date

City of Whitefish
Print Name

1 May be signed by the applicant or representative, authorization letter from owner must be attached. If there are multiple owners, a letter authorizing one owner to be the authorized representative for all must be included.
APPLICATION CONTENT:
Attached ALL ITEMS MUST BE INCLUDED - INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

- Zoning Map Amendment Application – 8 copies
- Written description how the project meets the criteria in Section D – 8 copies
- Map showing the location and boundaries of the property – 8 copies
- Reduced copy of the map not to exceed 11” x 17” – 1 copy
- Petition for zone change signed by the real property owners representing at least 65% of the land area for which the change in zoning classification is sought – 8 copies
- Electronic version of entire application such as .pdf

When all application materials are submitted to the Planning & Building Department, the application will be scheduled for public hearing before the Planning Board and City Council.

B. OWNER(S) OF RECORD:
Name: __Glacier Ranch Holdings llc_________________________________ Phone: ________________________
Mailing Address: ____________________________________________________________
City, State, Zip: ________________________
Email: ________________________

APPLICANT (if different than above):
Name: __City of Whitefish_________________________________ Phone: ________________________
Mailing Address: ____________________________________________________________
City, State, Zip: ________________________
Email: ________________________

TECHNICAL/PROFESSIONAL:
Name: ____________________________________________________________ Phone: ________________________
Mailing Address: ____________________________________________________________
City, State, Zip: ________________________
Email: ________________________

C. PROPOSAL:
CURRENT ZONING DISTRICT: __W-PUD/WLR__________________________________________
PROPOSED ZONING DISTRICT: ________________________

State the changed or changing conditions that make the proposed amendment necessary:

The PUD expired June 18, 2013; therefore, staff is initiating a zone change to remove the PUD overlay.
D. FINDINGS: The following criteria form the basis for approval or denial of the Zone Change. The burden of satisfactorily addressing these criteria lies with the applicant. Review the criteria below and discuss how the proposal conforms to the criteria. If the proposal does not conform to the criteria, describe how it will be mitigated.

1. Made in accordance with a Growth Policy

   This property has a land use designation of Suburban. Suburban designation does not comply with the WLR (Limited Residential District), but is the underlying zoning for the property. This proposal is only intended to remove the PUD overlay from the property as it has expired. WLR is consistent with an Urban land use designation.

2. Secure safety from fire and other dangers:

   The properties are served by the City of Whitefish Police and Fire Departments. Any future development will meet all City requirements for roadway widths and Fire Department standards.

3. Promote public health, safety and general welfare:

   Public services and utilities are available further south on the Big Mountain Road. The original developer intended to extend utilities through the site. The zoning establishes setback and lot coverage standards and any new construction requires a building permit.

4. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements:

   The properties have access to Big Mountain Road, a state highway. Water and sewer are nearby. There is access to recreation facilities nearby.

5. Provide reasonable provision of adequate light and air:

   The proposed zoning designation include setbacks, maximum building height and lot coverage. In addition, all construction will require conformance with the Building Code.
6. The effect motorized and nonmotorized transportation systems:

The rezone in itself will have no effect on the motorized and nonmotorized transportation system. This will be reviewed, if a subdivision is proposed.

7. Promote compatible urban growth:

The property is located in an area identified as Suburban. While the zoning proposed does not comply with the Growth Policy, this request is to only remove the PUD overlay on the property as it has expired.

8. Consider the character of the district and its particular suitability for particular uses:

The character of the district is Rural Residential; therefore, the proposed zoning is suitable for the property and has considered the character of the district.

9. Conserving the value of buildings:

The value of surrounding buildings will not be negatively impacted by the proposed zone change.

10. Encourage the most appropriate use of land throughout the jurisdictional area:

The proposed zone change complies with the Growth Policy and is simply removing the PUD overlay from the properties as it has expired.

11. That historical uses and established use patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other:

The proposed zone change complies with the Growth Policy and is simply removing the PUD overlay from the properties as it has expired.
ORDINANCE NO. 17-___

An Ordinance of the City Council of the City of Whitefish, Montana, removing a Planned Unit Development overlay on approximately 228.5 acres of land along Big Mountain Road known as Tracts 2C, 4, 5, 5AF, 5B, 5C, 5E, 6A, 6CB, 6CD, 6C and 6D in Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, and reverting the property to its original zoning of Whitefish WA (Agricultural District) and WRR-1 (Low-Density Resort Residential District), and adopting findings.

WHEREAS, the City of Whitefish initiated a request to remove the expired Planned Unit Development overlay on the project formerly known as Lookout Ridge with respect to twelve parcels of property located along Big Mountain Road, and legally described as Tracts 2C, 4, 5, 5AF, 5B, 5C, 5E, 6A, 6CB, 6CD, 6C and 6D in Section 12, Township 31 North, Range 22 West, Flathead County, Montana; and

WHEREAS, in response to the City-initiated request to remove the expired Planned Unit Development overlay and revert the property to its original zoning, the Whitefish Planning & Building staff prepared Staff Report WZC 17-18, dated September 14, 2017, which analyzed the proposed rezone and recommended in favor of its approval; and

WHEREAS, at a lawfully noticed public hearing on September 21, 2017, the Whitefish Planning Board reviewed Staff Report WZC 17-18, received an oral report from Planning staff, invited public comment, and thereafter voted to recommend in favor of the proposed zone change; and

WHEREAS, at a lawfully noticed public hearing on October 2, 2017, the Whitefish City Council reviewed Staff Report WZC 17-18 and letter of transmittal, received an oral report from Planning staff, and invited public comment; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to remove the Planned Unit Development overlay and revert the property to its original zoning of Whitefish WA (Agricultural District) and WRR-1 (Low-Density Resort Residential District); and

WHEREAS, the proposed rezone meets zoning procedure and the criteria and guidelines for the proposed rezone required by MCA §§ 76-2-303 through 76-2-305 and WCC § 11-7-12.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: Staff Report WZC 17-18, dated September 14, 2017, together with the September 26, 2017 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.
Section 3: The real property located along Big Mountain Road, and legally described as Tracts 2C, 4, 5, 5AF, 5B, 5C, 5E, 6A, 6CB, 6CD, 6C and 6D in Section 12, Township 31 North, Range 22 West, previously zoned Whitefish WA/WPUD & WRR-1/WPUD (Agricultural District with a Planned Unit Development overlay) is hereby rezoned to Whitefish WA (Agricultural District) and WRR-1 (Low-Density Resort Residential District).

Section 4: The official Zoning Map of the City of Whitefish, Montana, shall be amended, altered and changed to provide that the reversion and zoning map amendment of the real property identified on the map attached hereto as Exhibit "A", and incorporated herein by reference, shall be designated Whitefish WLR (One-Family Limited Residential District). The Zoning Administrator is instructed to change the City's official Zoning Map to conform to the terms of this Ordinance.

Section 5: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 6: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.


__________________________________________
John M. Muhlfeld, Mayor

ATTEST:

__________________________________________
Michelle Howke, City Clerk
The location of the subject properties are outlined in purple.
September 26, 2017

Mayor and City Council
City of Whitefish
PO Box 158
Whitefish MT 59937

RE: City of Whitefish Zone Change: WZC 17-18

Honorable Mayor and Council:

Summary of Requested Action: This is a request by the City of Whitefish to rezone twelve parcels with the zoning designations of WA/WPUD & WRR-1/WPUD (Agricultural District with a Planned Unit Development overlay) and (Low-Density Resort Residential District with a Planned Unit Development overlay) to WA (Agricultural District) and WRR-1 (Low-Density Resort Residential District) in order to remove an expired PUD overlay. The subject properties are unaddressed, 3301 Big Mountain Road and 3300 Whitefish Lookout Road and total approximately 228.5 acres.
Planning & Building Department Recommendation: Staff recommended approval of the above referenced rezone.

Public Hearing: No one from the public. The draft minutes from the Planning Board for this item are attached to this packet.

Planning Board Action: The Whitefish Planning Board met on September 21, 2017 and considered the requested rezone. Following the public hearing, the Planning Board unanimously recommended approval of the above referenced rezone and adopted the staff report as findings of fact.

Proposed Motion:

- I move to approve WZC 17-18 and adopt the Findings of Fact in the staff report, as recommended by the Whitefish Planning Board on September 21, 2017.

This item has been placed on the agenda for your regularly scheduled meeting on October 2, 2017. Should Council have questions or need further information on this matter, please contact the Planning Board or the Planning & Building Department.

Respectfully,

Wendy Compton-Ring, AICP
Senior Planner

Att: Draft Minutes of 9-21-17 Planning Board Meeting

Exhibits from 2-19-17 Staff Packet
1. Staff Report – WZC 17-18, 9-14-17
2. Adjacent Landowner Notice, 9-1-17
3. Advisory Agency Notice, 9-1-17
4. Rezone Application, 9-1-17

c: w/att Michelle Howke, City Clerk
<table>
<thead>
<tr>
<th>BOARD QUESTIONS OF STAFF</th>
<th>Qunell asked and Compton-Ring said it has been added in the new PUD recommendations to have expired projects go back through public review to have the zone changed back to the underlying zone after it expires, so we will probably be seeing more of these. Linville asked and Compton-Ring said this is like a step back from potential development since it is expired, so if someone was going to develop it they would have to reapply for the PUD. If anyone was proposing a subdivision on this property, they would notice the adjacent landowners, hold a public hearing and go to City Council. All of the PUD considerations are wiped out after this, the plat is expired, and they would be starting all over.</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPLICANT / AGENCIES</td>
<td>None.</td>
</tr>
<tr>
<td>PUBLIC COMMENT</td>
<td>Chair Qunell opened the public hearing. There being no comment, he closed the public hearing and turned the matter over to the Planning Board for consideration.</td>
</tr>
<tr>
<td>MOTION / BOARD DISCUSSION</td>
<td>Hildner moved and Linville seconded to remove the expired Coldwater Basin Planned Unit Development overlay, and adopt the findings of fact within staff report WZC 17-17 as proposed by City Staff.</td>
</tr>
<tr>
<td>VOTE</td>
<td>The motion passed unanimously. The matter is scheduled to go before the Council on October 2, 2017.</td>
</tr>
<tr>
<td>PUBLIC HEARING 3: CITY OF WHITEFISH REZONE REQUEST 6:52 pm</td>
<td>A request by the City of Whitefish to rezone twelve parcels to remove the expired Planned Unit Development overlay on the project formerly known as Lookout Ridge to WRR-1 (Low-Density Resort Residential District) and WA (Agricultural District). The properties are unaddressed, 3301 Big Mountain Road and 3300 Whitefish Lookout Road in S12 T31N R22W.</td>
</tr>
<tr>
<td>STAFF REPORT WZC 17-18 (Compton-Ring)</td>
<td>Senior Planner Compton-Ring reviewed her staff report and findings. No comments have been received. Staff recommended adoption of the findings of fact within staff report WZC 17-18, and for approval to the Whitefish City Council.</td>
</tr>
<tr>
<td>BOARD QUESTIONS OF STAFF</td>
<td>Qunell asked and Compton-Ring said when we approve a PUD and improvements are made but then the development isn't completed, the developer doesn't have to restore the property. A City road was not put</td>
</tr>
</tbody>
</table>
in this development. The former developer lost this property to the bank and someone new has come in, and she doesn't know what the current owner has planned.

<table>
<thead>
<tr>
<th>APPLICANT / AGENCIES</th>
<th>None.</th>
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<tbody>
<tr>
<td>PUBLIC COMMENT</td>
<td>Chair Qunell opened the public hearing. There being no comment, he closed the public hearing and turned the matter over to the Planning Board for consideration.</td>
</tr>
<tr>
<td>MOTION / BOARD DISCUSSION</td>
<td>Ellis moved and Linville seconded to adopt the findings of fact within staff report WZC 17-18 as proposed by City Staff.</td>
</tr>
<tr>
<td>VOTE</td>
<td>The motion passed unanimously. The matter is scheduled to go before the Council on October 2, 2017.</td>
</tr>
<tr>
<td>PUBLIC HEARING 4: CITY OF WHITEFISH REZONE REQUEST</td>
<td>A request by the City of Whitefish to rezone one parcel annexed into City limits from County R-3 (One-Family Residential) to WR-1 (One-Family Residential District). The property is located at 2385 Mountain Shadows Drive in S14 T31N R21W.</td>
</tr>
<tr>
<td>STAFF REPORT WZC 17-16 (Minnich)</td>
<td>Planner Minnich reviewed her staff report and findings. One comment was received with supporting documents and that was included in the packet. It contains the CC&amp;Rs for the subdivision which state this parcel can be split in half. That is ultimately where this property is headed, and they had to annex in order to get water and sewer service. Staff recommended adoption of the findings of fact within staff report WZC 17-16, and for approval to the Whitefish City Council.</td>
</tr>
<tr>
<td>BOARD QUESTIONS OF STAFF</td>
<td>Qunell asked and Minnich said splitting the property will not cause a problem meeting the lot size. This lot is allowed to do it in the WR-1 so when the split it they will meet the lot size. Only two lots in the subdivision can be split and this is one of them. Hessellund is concerned that it will become a 10,000 square foot lot versus a 15,000 square foot lot as she thinks it's already congested. What if all the houses burned down and the CC&amp;Rs were gotten rid of, they could have 10,000 square foot lots. Minnich said they would have to come through subdivision review. Qunell pointed out they are County R-3, so if we go to a bigger lot size, it's a takeaway for us, and would be taking back something the County gave them.</td>
</tr>
</tbody>
</table>
A report to the Whitefish Planning Board and the Whitefish City Council regarding a request by the City of Whitefish to rezone twelve parcels to remove the expired Planned Unit Development overlay on the project formerly known as Lookout Ridge to WA (Agricultural District) and WRR-1 (Low-Density Resort Residential District). This request is scheduled before the Whitefish Planning Board for public hearing on Thursday, September 21, 2017 at 6:00 PM. A recommendation will be forwarded to the City Council for a subsequent public hearing on Monday, October 2, 2017 at 7:10 PM. Both hearings will be held in the Whitefish City Council Chambers.

**PROJECT SCOPE**

The City is proposing to rezone twelve parcels to remove the expired Planned Unit Development overlay on the project formerly known as Lookout Ridge to WA (Agricultural District) and WRR-1 (Low-Density Resort Residential District). The property is currently undeveloped and is zoned WA/WPUD & WRR-1/WPUD (Agricultural District with a Planned Unit Development overlay) and (Low-Density Resort Residential District with a Planned Unit Development overlay). The parcels are located within the city limits.

The purpose of rezoning is a housekeeping matter. The project formerly known as Lookout Ridge expired on June 21, 2017. As part of this subdivision, the Council approved a Planned Unit Development (PUD) overlay. To remove the expired PUD overlay, the City has initiated a rezone to revert the property back to its original zoning. The current zoning is WA/WPUD & WRR-1/WPUD and the request will rezone the property to WA & WRR-1 – leaving the underlying zoning in place. There are no development plans with this rezone request.

**Purpose of WA:** The WA district is intended for areas for silviculture, agricultural functions, outdoor recreation purposes, open spaces or future development, and for detached single-family homes with customary farm and/or accessory buildings situated in a setting conducive to a rural lifestyle.

**WA (proposed zoning)**

- Minimum lot area: 15 acres
- Front yard setback: 50-feet
- Side yard setback: 20-feet
- Rear yard setback: 20-feet
- Maximum height: 35-feet
- Max. lot coverage: 20% - 2 acres or less
  - 10% - 2 acres or more

**Purpose of WRR-1:** The WA district is intended to provide a low density setting for secondary residential resorts.

**WRR-1 (proposed zoning)**

- Minimum lot area: n/a
- Front yard setback: 25-feet
- Side yard setback: 10-feet; 15-feet (triplex or greater)
Rear yard setback: 20-feet  
Maximum height: 35-feet  
Max. lot coverage: 35%

A. Applicant:  
City of Whitefish  
PO Box 158  
Whitefish, MT 59937

Property Owners:  
McMahon Real Estate IV LP  
1119 Post Oak Pl  
Westlake, TX 76262  
Stillwater Corporation  
155 7th Ave WN  
Kalispell, MT 59901
B. **Location and Size:**
The subject property is located along Big Mountain Road. The properties are unaddressed, 3301 Big Mountain Road and 3300 Whitefish Lookout Road and can be legally described as Tracts 2C, 4, 5, 5AF, 5B, 5C, 5E, 6A, 6CB, 6CD, 6C, 6D in S12 T31N R22W. The subject property is approximately 228.5 acres.

C. **Existing Land Use, Zoning and Growth Policy Designation:**
The property is undeveloped. The Growth Policy identifies the parcels as both Rural and Resort Residential on the Whitefish City-County Growth Policy Future Land Use Map. The text within the Growth Policy relating to the Rural classification states this designation is “Open lands with decidedly rural character, including farmlands, pasture lands, timber harvesting and management areas, and forest lands generally fall under this designation. Agricultural and timber management are generally allowed, but residential densities are extremely low. This designation includes “important farmlands” as defined by National Resources Conservation Service criteria. Zoning is mainly WA-10 and WA-20.”

The text within the Growth Policy relating to the Resort Residential classification states this designation is “This designation is defined by resort residential development of all types and densities (in accordance with specific zoning). Included are one and two-family residential, rental cabins, vacation cottages, condominiums, and town homes. Commercial hotels and motels are not a part of this designation, but limited resort commercial is allowed. Zoning is generally WRR-1 and WRR-2.”
D. **Adjacent Land Uses, Zoning and Growth Policy Designations:**

<table>
<thead>
<tr>
<th>North</th>
<th>Whitefish Mtn Resort</th>
<th>BMRR</th>
<th>Planned Resort</th>
</tr>
</thead>
<tbody>
<tr>
<td>South</td>
<td>Residential</td>
<td>WCR/WPUD</td>
<td>Suburban Residential</td>
</tr>
<tr>
<td>East</td>
<td>Timberlands</td>
<td>SAG-10</td>
<td>Rural</td>
</tr>
<tr>
<td>West</td>
<td>Residential</td>
<td>RR-1; SAG-10</td>
<td>Resort Residential; Rural</td>
</tr>
</tbody>
</table>

E. **Public Notice:**
A notice was mailed to adjacent land owners within 150-feet of the subject parcels on September 1, 2017. Advisory agencies were noticed on September 1, 2017. A notice was published in the Whitefish Pilot on September 6, 2017. As of the writing of this report, no public comments have been received.

F. **Utilities:**

| Sewer:          | City of Whitefish   |
| Water:          | City of Whitefish   |
| Solid Waste:    | North Valley Refuse |
| Electric:       | Flathead Electric Co-op |
| Natural Gas:    | Northwest Energy   |
| Phone:          | Centurylink        |
| Police:         | City of Whitefish   |
| Fire:           | City of Whitefish   |
REVIEW AND FINDINGS OF FACT:
This request is reviewed in accordance with the Whitefish zoning regulations, Section 11-7-12 and based on statutory criteria on the purposes of zoning (76-2-303 – 305 M.C.A.).

The Whitefish zoning regulations set forth the process for rezoning properties and the considerations that both the Planning Board and the City Council must make in order to approve an amendment. While some of these considerations are not applicable as the existing and proposed zoning districts already address them, several considerations need to be reviewed in light of the proposed zoning district. The following is a review and discussion of considerations applicable to the proposed zoning district.

A. Made in Accordance with a Growth Policy.
The Growth Policy Future Land Use Map designates the parcels within the Rural and Resort Residential designations. The proposed change to WA (Agricultural District) zoning and WRR-1 (Low-Density Resort Residential District) are consistent with the Rural and Resort Residential designations. In addition, this rezone request is simply removing the expired PUD overlay.

Finding 1: The proposed zone change to WA and WRR-1 comply with the Rural and Resort Residential land use designations because WA is the closest zoning designation for the Rural and the WRR-1 conforms to the Resort Residential designation.

B. Secure safety from fire, panic and other dangers.
The property is served by the City of Whitefish Police and Fire Departments. Any future development will meet all City requirements for roadway widths and Fire Department standards.

Finding 2: The proposed zone change will secure safety from fire, panic and other dangers because the city standards and zoning standards will be reviewed at the time of development.

C. Promote the public health, public safety and general welfare.
Public services and utilities are near the property and will be extended to serve the site.

Finding 3: The proposed zone change promotes public interest, health, comfort and general welfare because public services are available to the property or are nearby.

D. Facilitate the Adequate Provision of Transportation, Water, Sewerage, Schools, Parks and other Public Requirements.
Water and sewer are nearby available, the properties are adjacent to a state maintained road, which is paved. The school district will not change due to the rezone as there is no development proposal at this time.

Finding 4: The proposed zone change facilitates the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because it is located inside city limits and is served by all public services and facilities.
E. **Reasonable Provision of Adequate Light and Air.**
The proposed zoning designation includes setbacks, maximum building height and lot coverage. In addition, all construction will require conformance with the Building Code.

**Finding 5:** The proposed zone change provides reasonable provision of adequate light and air because the zoning and other city standards will prevent the overcrowding of the land through lot coverage, setbacks and conformance with the Building Code.

F. **The Effect on Motorized and Non-motorized Transportation Systems.**
The property is located in the city limits and is served by Big Mountain Road, a paved State maintained road. The proposed zone change from WAWPUD & WRR-1/WPUD to WA and WRR-1 will not have an effect on the motorized and non-motorized transportation systems because the rezoning is simply removing the expired PUD overlay.

**Finding 6:** The proposed zone change will not have an effect on motorized and non-motorized transportation systems because the rezoning is simply removing the expired PUD overlay.

G. **Promotion of Compatible Urban Growth.**
The subject property is located in an area identified as Rural and Resort Residential designations by the Growth Policy’s Future Land Use Map. The Growth Policy designates Rural as including WA-10 and WA-20 zones. In addition, the Growth Policy also designates Resort Residential as including WRR-1 and WRR-2 zones. This request is to simply remove the expired PUD overlay; therefore, the proposed zone change will promote compatible growth for the surrounding area.

**Finding 7:** The proposed zone change will promote compatible urban growth because the properties are served by public services, and the proposed zoning designation is the most equivalent City zone.

H. **Consideration to the character of the district and its particular suitability for particular uses.**
The character of the district is predominately single family residential. The lot sizes are comparable, and the proposed zoning will be the most equivalent.

**Finding 8:** The proposed zone change considers the character of the district and its suitability for particular uses because it is a predominately single-family neighborhood, the lot sizes are comparable between both zones, and the proposed zoning will be the most equivalent.

I. **Conserving the Value of Buildings.**
The subject properties are currently vacant land. Therefore, the value of surrounding buildings will not be negatively impacted by the proposed zone change.
Finding 9: The proposed zone change will conserve the value of buildings because the properties are currently undeveloped, and the value of surrounding buildings will be maintained as the WA and WRR-1 zoning permits compatible land use patterns.

J. Encouraging the Most Appropriate Use of Land Throughout the Jurisdictional Area.
As previously stated, the area encompassing the subject properties is listed as both Rural and Resort Residential in the Whitefish Growth Policy. The proposed zone change to WA and WRR-1 would encourage the most appropriate use of land as it is simply removing the expired PUD overlay and retaining the existing WA and WRR-1 zoning designation.

Finding 10: The proposed zone change encourages the most appropriate use of land throughout the jurisdictional area because it is simply removing the expired PUD overlay.

K. That Historical Use and Establish Use Patterns and Recent Change in Use Trends will be Weighed Equally and Consideration not be Given One to the Exclusion of the Other.

The property was previously zoned WA and WRR-1 and a PUD overlay was approved that considered the historical use and established patterns. This rezone is simply a housekeeping matter to remove the PUD overlay.

Finding 11: The Planning Board and the City Council should consider the historical and established use patterns, including trends, when making a decision on the project.

RECOMMENDATION
It is recommended that the Whitefish Planning Board adopt staff report WZC 17-18 findings of fact and recommend to the Whitefish City Council the zoning map amendment be approved.
Public Notice of Proposed Land Use Action

The City of Whitefish would like to inform you that the City is proposing to rezone twelve parcels to remove the expired Planned Unit Development overlay on the project formerly known as Lookout Ridge to WRR-1 (Low-Density Resort Residential District) and WA (Agricultural District). The property is currently undeveloped and is zoned WPUD/WRR-1 (Low-Density Resort Residential District with a Planned Unit Development overlay) and WPUD/WA (Agricultural District with a Planned Unit Development overlay). There is no development proposal for this property with this request. The properties are unaddressed, 3301 Big Mountain Road and 3300 Whitefish Lookout Road and can be legally described as Tracts 5E, 5, 5C, 5B, 2C, 5AF, 6A, 4, 6CB, 6CD, 6C, 6D in S12 T31N R22W, P.M.M., Flathead County.

You are welcome to provide comments on the project. Comments can be in written or email format. The Whitefish Planning Board will hold a public hearing for the proposed project request on:

Thursday, September 21, 2017
6:00 p.m.
Whitefish City Council Chambers, City Hall
1005 Baker Avenue, Whitefish MT 59937

The Whitefish Planning Board will make a recommendation to the City Council, who will then hold a public hearing and take final action on Monday, October 2, 2017 at 7:10 p.m., also in the Whitefish City Council Chambers.

On the back of this flyer is a site plan of the project. Additional information on this proposal can be obtained at the Whitefish Planning Department located at 510 Railway Street. The public is encouraged to comment on the above proposals and attend the hearings. Please send comments to the Whitefish Planning Department, PO Box 158, Whitefish, MT 59937, or by phone (406) 863-2410, fax (406) 863-2409 or email at wcompton-ring@cityofwhitefish.org. Comments received by the close of business on Monday, September 11, 2017, will be included in the packets to the Planning Board members. Comments received after the deadline will be summarized to the Planning Board members at the public hearing.
The regular meeting of the Whitefish Planning Board will be held on Thursday, September 21, 2017 at 6:00 pm in the Whitefish City Council Chambers at 418 E Second Street. During the meeting, the Board will hold a public hearing on the item listed below. Upon receipt of the recommendation from the Planning Board, the Whitefish City Council will hold a subsequent public hearing on Monday, October 2, 2017. City Council meetings start at 7:10 pm at 418 E Second Street in the Whitefish City Council Chambers on the second floor.

1. A request by the City of Whitefish to rezone one parcel annexed into City limits from County R-3 (One-Family Residential) to WR-1 (One-Family Residential District). The property is located at 2385 Mountain Shadows Drive in S14 T31N R21W. WZC 17-16 (Minnich)

2. A request by the City of Whitefish to rezone one parcel to remove the expired Planned Unit Development overlay on the project formerly known as Coldwater Basin to WLR (One-Family Limited Residential District). The property is unaddressed located on Big Mountain Road (Tract 2B) S12 T31N R22W. WZC 17-17 (Compton-Ring)

3. A request by the City of Whitefish to rezone twelve parcels to remove the expired Planned Unit Development overlay on the project formerly known as Lookout Ridge to WRR-1 (Low-Density Resort Residential District) and WA (Agricultural District). The properties are unaddressed, 3301 Big Mountain Road and 3300 Whitefish Lookout Road S12 T31N R22W. WZC 17-18 (Compton-Ring)

4. A request by 95 Karrow llc to rezone three parcels from WI (Industrial and Warehousing District) to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed Use Transitional District) in conformance with the 2015 Highway 93 W Corridor Plan. The properties are located at 95 Karrow Avenue in S36 T31N R22W. WZC 17-19 (Compton-Ring)

Documents pertaining to this agenda item are available for review at the Whitefish Planning & Building Department, 418 E Second Street, during regular business hours and on the City’s webpage: www.cityofwhitefish.org under Planning Board. Inquiries are welcomed. Interested parties are invited to attend the meeting and make known their views and concerns. Comments in writing may be forwarded to the Whitefish Planning & Building Department at the above address prior to the
hearing or via email: dtaylor@cityofwhitefish.org. For questions or further information regarding these proposals, phone 406-863-2410.
ZONING MAP AMENDMENT

FEE ATTACHED $ n/a

INSTRUCTIONS:

☐ A pre-application meeting with planning staff is required. Date of pre-application meeting:

☐ Submit the application fee, completed application and appropriate attachments to the Whitefish Planning & Building Department a minimum of forty five (45) days prior to the Planning Board meeting at which this application will be heard.

☐ The regularly scheduled meeting of the Whitefish City Planning Board is the third Thursday of each month at 6:00 PM in the City Council Chambers at 1005 Baker Avenue.

☐ After the Planning Board hearing, the application is forwarded with the Board’s recommendation to the next available City Council meeting for hearing and final action.

A. PROJECT INFORMATION:

Project Address: unaddressed, 3301 Big Mountain Road, 3300 Whitefish Lookout Road

Assessor’s Tract No(s) 0013204, 0455862, 0775540, 0455862, 0013210, 0455714, 0152813, 0011078, 0011078, 0980386, 0980386, 0979219, 0012103, 0000458 Lot No(s) Tracts 5E, 5, 5C, 5B, 2C, 5AF, 6A, 4, 6CB, 6CD, 6C, 6D

Block #________ Section _________ Township _________ Subdivision Name ________________________________ Range __________

I hereby certify that the information contained or accompanied in this application is true and correct to the best of my knowledge. The signing of this application signifies approval for the Whitefish staff to be present on the property for routine monitoring and inspection during the approval and development process.

Owner’s Signature¹

Date

Print Name

Applicant’s Signature

Date

City of Whitefish

Print Name

¹ May be signed by the applicant or representative, authorization letter from owner must be attached. If there are multiple owners, a letter authorizing one owner to be the authorized representative for all must be included.
APPLICATION CONTENTS.

Attached ALL ITEMS MUST BE INCLUDED - INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

___ Zoning Map Amendment Application – 8 copies
___ Written description how the project meets the criteria in Section D – 8 copies
___ Map showing the location and boundaries of the property – 8 copies
___ Reduced copy of the map not to exceed 11” x 17” – 1 copy
___ Petition for zone change signed by the real property owners representing at least 65% of the land area for which the change in zoning classification is sought – 8 copies
___ Electronic version of entire application such as .pdf

When all application materials are submitted to the Planning & Building Department, the application will be scheduled for public hearing before the Planning Board and City Council.

B. OWNER(S) OF RECORD:
Name: ________________________________ Phone: ________________________________
Mailing Address: ________________________________
City, State, Zip: ________________________________
Email: ________________________________

APPLICANT (if different than above):
Name: ________________________________ Phone: ________________________________
Mailing Address: ________________________________
City, State, Zip: ________________________________
Email: ________________________________

TECHNICAL/PROFESSIONAL:
Name: ________________________________ Phone: ________________________________
Mailing Address: ________________________________
City, State, Zip: ________________________________
Email: ________________________________

C. PROPOSAL:
CURRENT ZONING DISTRICT: WPUD/WA; WPUD/WRR-1
PROPOSED ZONING DISTRICT: WA & WRR-1

State the changed or changing conditions that make the proposed amendment necessary:

The PUD expired June 21, 2017; therefore, staff is initiating a zone change to remove the PUD overlay.
D. FINDINGS: The following criteria form the basis for approval or denial of the Zone Change. The burden of satisfactorily addressing these criteria lies with the applicant. Review the criteria below and discuss how the proposal conforms to the criteria. If the proposal does not conform to the criteria, describe how it will be mitigated.

1. Made in accordance with a Growth Policy

   These properties have two land use designations – Rural and Resort Residential. Rural complies with the WA (Agricultural District) and Resort Residential complies with WRR-1 (Low-Density Resort Residential).

2. Secure safety from fire and other dangers:

   The properties are served by the City of Whitefish Police and Fire Departments. Any future development will meet all City requirements for roadway widths and Fire Department standards.

3. Promote public health, safety and general welfare:

   Public services and utilities are available along the southern edge of these properties adjacent to Iron Horse, but not available further to the north. The original developer intended to extend utilities through the site. The zoning establishes setback and lot coverage standards and any new construction requires a building permit.

4. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements:

   The properties have access to Big Mountain Road, a state highway, and Lookout Road, a County road. Water and sewer are nearby but not necessarily to each lot. There is access to recreation facilities nearby.

5. Provide reasonable provision of adequate light and air:

   The proposed zoning designation include setbacks, maximum building height and lot coverage. In addition, all construction will require conformance with the Building Code.

6. The effect motorized and nonmotorized transportation systems:
The rezone in itself will have no effect on the motorized and nonmotorized transportation system. This will be reviewed, if a subdivision is proposed.

7. Promote compatible urban growth:

The properties are located in an area identified as both Resort Residential and Rural. The zoning proposed complies with the Growth Policy.

8. Consider the character of the district and its particular suitability for particular uses:

The character of the district is either Rural or Resort Residential; therefore, the proposed zoning is suitable for the property and has considered the character of the district.

9. Conserving the value of buildings:

The value of surrounding buildings will not be negatively impacted by the proposed zone change.

10. Encourage the most appropriate use of land throughout the jurisdictional area:

The proposed zone change complies with the Growth Policy and is simply removing the PUD overlay from the properties as it has expired.

11. That historical uses and established use patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other:

The proposed zone change complies with the Growth Policy and is simply removing the PUD overlay from the properties as it has expired.
ORDINANCE NO. 17—

An Ordinance of the City Council of the City of Whitefish, Montana, rezoning approximately 14.08 acres of land located at 95 Karrow Avenue in Sections 35 and 36, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, from WI (Industrial District) to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed-Use Transitional), and adopting findings with respect to such rezone.

WHEREAS, the City of Whitefish initiated a rezone with respect to property located at 95 Karrow Avenue, and legally described as Tract 1 of Certificate of Survey No. 9540 in Sections 35 and 36, Township 31 North, Range 22 West, Flathead County, Montana; and

WHEREAS, in response to the City-initiated rezone, the Whitefish Planning & Building staff prepared Staff Report WZC 17-19, dated September 14, 2017, which analyzed the proposed rezone and recommended in favor of its approval; and

WHEREAS, at a lawfully noticed public hearing on September 21, 2017, the Whitefish Planning Board reviewed Staff Report WZC 17-19, received an oral report from Planning staff, invited public comment, and thereafter voted to recommend in favor of the proposed zone change; and

WHEREAS, at a lawfully noticed public hearing on October 2, 2017, the Whitefish City Council reviewed Staff Report WZC 17-19 and letter of transmittal, received an oral report from Planning staff, and invited public comment; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the proposed rezone; and

WHEREAS, the proposed rezone meets zoning procedure and the criteria and guidelines for the proposed rezone required by MCA §§ 76-2-303 through 76-2-305 and WCC § 11-7-12.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: Staff Report WZC 17-19, dated September 14, 2017, together with the September 26, 2017 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.

Section 3: The real property located at 95 Karrow Avenue, and legally described as Tract 1 of Certificate of Survey No. 9540 in Sections 35 and 36, Township 31 North, Range 22 West, previously zoned WI (Industrial District) is hereby rezoned to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed-Use Transitional).
Section 4: The official Zoning Map of the City of Whitefish, Montana, shall be amended, altered and changed to provide that the rezone and zoning map amendment of the real property described in Exhibit "A" and shown on Exhibit "B," attached hereto and incorporated herein by reference, shall be designated WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed-Use Transitional). The Zoning Administrator is instructed to change the City's official Zoning Map to conform to the terms of this Ordinance.

Section 5: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 6: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.


John M. Muhlfeld, Mayor

ATTEST:

Michelle Howke, City Clerk
The following paragraph describes the boundary of the proposed WI-T zone:

That portion of the Northeast one-quarter or the Northeast one-quarter (N.E.1/4 N.E. 1/4) of Section thirty-five (35), Township thirty-one North (T 31N), Range twenty-two West (R 22W), Principal Meridian Montana, Flathead County, Montana, described as follows:

Commencing at the Northeast corner of said Section 35; thence S 00° 14’ 05” E and along the east boundary of said Section 35 a distance of 190.90 feet to a point on the south line of the Burlington Northern Railroad right of way; thence N 88° 15’ 47” W and along the southerly boundary of the Burlington Northern Railroad right of way a distance of 171.87 feet to the TRUE POINT OF BEGINNING; thence N 88° 15’ 47” W a distance of 102.96 feet. Thence, S 00° 03’ 52” W for a distance of 127.66 feet to a point on a line. Thence, S 89° 56’ 08” E for a distance of 96.63 feet to a point on a line. Thence, S 00° 00’ 00” E for a distance of 522.77 feet to a point on a line. Thence, S 89° 33’ 33” E for a distance of 188.60 feet to a point on a line. Thence, S 00° 24’ 44” W for a distance of 43.92 feet to a point on a line. Thence, S 89° 24’ 49” E for a distance of 400.31 feet to a point on a line. Thence, N 10° 08’ 55” E for a distance of 66.01 feet to a point on a line. Thence, N 29° 34’ 36” E for a distance of 130.43 feet to a point on a line. Thence, N 60° 25’ 24” W for a distance of 716.67 feet to a point on a line. Thence, N 29° 29’ 43” E for a distance of 118.97 feet to a point on a line. Thence, N 56° 46’ 38” W for a distance of 111.70 feet to the POINT OF BEGINNING, and containing 5.692 acres of land, more or less.

The remaining parcels containing 0.19 acres and 8.138 acres of land respectively, are comprised of Tract 1 of the original COS 9540, less the above described WI-T parcel. These parcels are proposed to be zoned WT-3.
September 26, 2017

Mayor and City Council
City of Whitefish
PO Box 158
Whitefish MT 59937

RE: 95 Karrow llc Zone Change: WZC 17-19

Honorable Mayor and Council:

Summary of Requested Action: This is a request by 95 Karrow llc to rezone Tract 1 of COS 9540 from WI (Industrial District) to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed-Use Transitional) as part of the implementation of Highway 93 W Corridor Plan approved by the Whitefish City Council in 2015 and the zoning districts created by the Council in 2016. The subject properties are located at 95 Karrow Avenue and total approximately 14.08 acres.
Planning & Building Department Recommendation: Staff recommended approval of the above referenced rezone.

Public Hearing: The applicant's representative spoke in support of the request. Mayre Flowers, Citizens for a Better Flathead, handed out a letter at the meeting which is included in your packet. In response to these comments staff would note, the Water Quality Protection regulations apply across all zoning districts in the City and the rest of the comments from the letter are more specific to future development and will be addressed during the development review process rather than the rezone request. Staff would further point out that the comments were not relevant to the rezone review criteria but were directed at future development. No one else from the public spoke. The draft minutes from the Planning Board for this item are attached to this packet.

Planning Board Action: The Whitefish Planning Board met on September 21, 2017 and considered the requested rezone. Following the public hearing, the Planning Board unanimously recommended approval of the above referenced rezone and adopted the staff report as findings of fact.

Proposed Motion:

- I move to approve WZC 17-19 and adopt the Findings of Fact in the staff report, as recommended by the Whitefish Planning Board on September 21, 2017.

This item has been placed on the agenda for your regularly scheduled meeting on October 2, 2017. Should Council have questions or need further information on this matter, please contact the Planning Board or the Planning & Building Department.

Respectfully,

Wendy Compton-Ring, AICP
Senior Planner

Att: Draft Minutes of 9-21-17 Planning Board Meeting

Exhibits from 2-19-17 Staff Packet
1. Staff Report – WZC 17-19, 9-14-17
2. Adjacent Landowner Notice, 9-1-17
3. Advisory Agency Notice, 9-1-17
4. Rezone Application, 9-1-17
5. Letter, Citizens for a Better Flathead, 9-21-17

c: w/att Michelle Howke, City Clerk
**CALL TO ORDER AND ROLL CALL**

Chair Steve Quinell called the regular meeting of the Whitefish Planning Board to order at 6:00 pm. Board members present were Councilor Richard Hildner, John Ellis, Judy Hessellund, Jim Laidlaw, and Allison Linville. Rebecca Norton was absent. Planning Director David Taylor, Senior Planner Wendy Compton-Ring and Planner II Bailey Minnich represented the Whitefish Planning and Building Department.

There were approximately six people in the audience.

**APPROVAL OF MINUTES**

6:01 pm

Ellis moved and Hildner seconded to approve the July 20, 2017 minutes without correction. *The motion passed unanimously.*

**COMMUNICATIONS FROM THE PUBLIC (ITEMS NOT ON THE AGENDA)**

6:02 pm

None.

**OLD BUSINESS:**

6:05 pm

None.

**PUBLIC HEARING 1: CITY OF WHITEFISH REZONE REQUEST**

6:03 pm

A request by 95 Karrow, LLC to rezone three parcels from WI (Industrial and Warehousing District) to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed Use Transitional District) in conformance with the 2015 Highway 93 W Corridor Plan. The properties are located at 95 Karrow Avenue in S 35 & 36 T31N R22W.

**STAFF REPORT WZC 17-19 (Compton-Ring)**

Senior Planner Compton-Ring reviewed her staff report and findings. She distributed a new drawing prior to the meeting which contained the same information but provided more clarity. No comments have been received to date.

Staff recommended adoption of the findings of fact within staff report WZC 17-19, and for **approval** to the Whitefish City Council.

**BOARD QUESTIONS OF STAFF**

Ellis asked and Compton-Ring said the purpose of the 0.9 acre parcel is when they developed the land use plan there was a little area to the south and west that has the neighborhood transitional designation,
which she thinks was intended to be a buffer for the residential area. Their zone change is reflecting what was approved by the Council in the significant public process in conjunction with adoption of the Highway 93 West Corridor Plan.

Laidlaw asked and Compton-Ring said First Avenue is unimproved right now and is a substandard width. There are no plans for it right now to be improved as a street. The City has always had interest in developing it as a bike path because it is a substandard width for right-of-way.

Hildner asked if the intent is to rebuild the northern extent of Karrow Avenue as access, and if so, will that also require curb and gutter. Compton-Ring said as we get a development proposal and conditions of approval from Public Works, they will look at exactly how that road will be designed, and enough right-of-way has been reserved.

Qunell referred to Page 5 of the staff report and asked and Compton-Ring said the residences in that area have not been rezoned WT-3; this is just an area the Highway 93 W Corridor Study identified could be zoned WT-3. It still has WR-3 zoning, but each individual property owner could come in and rezone themselves to the WT-3 since it’s been identified in the Corridor Plan as the appropriate zoning for that area. There have been no requests so far; this would be the first request implementing the Corridor Plan. The parcels we are talking about are currently WI. Qunell asked and Compton-Ring explained the differences between the permitted uses in WI verses WT-3 and the uses permitted in WI-T. Qunell asked and Compton-Ring said the goal is to transition the area into a light industrial-mixed use at the entrance to our City. Qunell asked and Compton-Ring there is no requirement for parkland in these zones. Parkland dedication comes out of subdivision review and commercial subdivisions are exempt from parkland dedication. If they were to do a PUD, they would have to provide open space but not necessarily dedicated parkland. Qunell also asked if there has been any kind of study done in this area which was previously a heavy industrial site, with possibly a settling pond. Compton-Ring suggested that question be referred to the applicant.

**APPLICATION / AGENCIES**

Bruce Boody, Landscape Architect, 301 E 2nd Street, representing 95 Karrow LLC, which is in the process of acquiring the property. They were working with the former owner and were one of the many people involved in the Highway 93 W Corridor Study, which was an extensive two-year study. A lot of work went into deciding what was a correct use and zone for this property. They are excited about how the zoning came out of that process and are looking forward to being the first ones to
participate by implementing this recommended zoning. He appreciates Compton-Ring's staff report and are in agreement with all the findings.

Hildner asked Mr. Boody to walk through the various polygons on the large drawing provided. Mr. Boody said the outlines are very rough buildings of some sort, but they are in the process of preparing their application and haven't defined the exact individual uses for them yet. They plan to conform to the uses in the Corridor Plan and zoning districts. They are planning to keep the existing steel structure of the Idaho Timber building and repurpose the whole building as some form of mixed-uses, again following the code. Hildner asked and Mr. Boody said the grey lines with hash marks represent transportation ways and parking. Hildner asked and Mr. Boody said the darkest red lines are not valid at this point and do not represent where top of bank is, but it's along there somewhere. The parallel dashed line is the proposed bicycle/pedestrian path along the River.

Hildner said it has been discussed that contaminates may have been just sort of pushed over the bank over the years with the sawdust piles, etc., and asked about contaminated soils. Mr. Boody said it is in process right now and there are 15 bore holes that have been drilled out there. They have a Phase I Environmental Assessment done by Roger Nobel which indicates extensive disturbance, but no contaminates at this time. They have aerial photos dating back to 1946, showing where they just pushed stuff out over the bank. In various places, they've found up to 14.6' of fill and so far it's pretty clean, just a mix of on-site soils, wood shavings and chips, etc., but no contaminates so far. Hildner asked and Mr. Boody said the railroad did not use that siding for anything other than accessing the Idaho Timber, that all the fueling and everything else was on the east side of the river.

Ellis said there are three parcels, a large WT-3 proposed zone, a large WI-T proposed zone, and a tiny WT-3 0.9 acre proposed zone and asked why the small zone. Mr. Boody said they are asking to rezone that to WT-3 as it was defined in the Corridor Plan, which he believed was exactly at the request of the adjacent Murray Avenue residents. They wanted the WT-3, which is more residential compatible, to be adjacent to their property, to possibly serve as a buffer for the residents. Ellis reminded Mr. Boody to keep in mind in their planning that the Conservation District and Fish, Wildlife & Parks want a 20' buffer from the top of the bank of the Whitefish River, otherwise we need a 310 or 224 permit and Mr. Boody said they would.
**PUBLIC COMMENT**  
Chair Qunell opened the public hearing.

Mayre Flowers, Citizens for a Better Flathead, 35 4th Street West in Kalispell distributed and read a list of comments, questions and requests. She also had questions about how parkland is calculated. Ms. Flowers would like to see the top of bank identified on the map when this item goes before Council.

There being no further comments, Chair Qunell closed the public hearing and turned the matter over to the Planning Board for consideration.

**MOTION / BOARD DISCUSSION**  
Ellis moved and Laidlaw seconded to adopt the findings of fact within staff report WZC 17-19 as proposed by City Staff.

Hildner asked and Compton-Ring said when we look at zone change applications, they review the specific criteria in the Montana Code Annotated and City Code regulations that guide them for making zone change requests, which are the findings they need to make. A lot of questions Ms. Flowers brought up are development review criteria. First the City needs to rezone the property and then standards are reviewed when a proposal is presented.

Following discussion, Hildner asked and Mr. Boody said Appendix C was included in their application because they participated in the whole Highway 93 W Corridor Study and the whole discussion around the Idaho Timber property, and they wanted to show the length of that and the detail that went into it. They believe in what came out of that. They put it in just to show what the process was in the Corridor Study. There is nothing nefarious about it. They know what the uses are in the two proposed zoning districts and will work strictly within those.

Hildner asked Compton-Ring if there is anything in the list of questions presented by Citizens for a Better Flathead that would not be addressed in a PUD or CUP request from the developer. Compton-Ring said she just got this tonight and hasn't had a chance to thoroughly review it. A lot of the questions/comments are development-related.

Qunell asked and Compton-Ring said they haven't done anything out of ordinary with this application. The applicants came to site review and talked about the zoning as it is and what they want to do and everything has been above board. Compton-Ring pointed out the Water Quality Protections Regulations are development standards, not an overlay zone.
Linville asked and Compton-Ring said the list provided by Citizens for a Better Flathead is development specific, not zone-change related. A zone change request doesn't grant a use variance.

Qunell said this is a very sensitive site with a lot of River frontage so it is important that we develop this area in a much better way than the old timber company that is out there. We need to develop it in a way that respects the values of our town and provides a nicer entrance to our City. There will be a lot more time before there is anything developed there and a lot more hearings before that happens. The zone change is the first step and we can't start talking about it until we get the zone change, because if we don’t change the zone, they could build another timber company there if they wanted.

Linville said she appreciates the time that went into the list of questions and once there is a development proposal, she suggests Citizens for a Better Flathead come back and make their questions more specific.

### VOTE

The motion passed unanimously. The matter is scheduled to go before the Council on October 2, 2017.

### PUBLIC HEARING 2: CITY OF WHITEFISH REZONE REQUEST

6:45 pm

A request by the City of Whitefish to rezone one parcel to remove the expired Planned Unit Development overlay on the project formerly known as Coldwater Basin to WLR (One-Family Limited Residential District). The property is unaddressed and located on Big Mountain Road (Tract 2B) in S12 T31N R22W.

### STAFF REPORT

**WZC 17-17 (Compton-Ring)**

Senior Planner Compton-Ring reviewed her staff report and findings. Recently there have been some court cases across the country, not specifically in Montana, that in order to remove a PUD from an expired project, you need to go back through a public process. Our City Attorney advised that moving forward they take these back through a public review even though they've expired, so it's more of a housekeeping matter, and in the draft updated PUD chapter this has been included as a new provision. The Coldwater Basin project expired in 2013, and there is no development proposal with this zone request. One email was received regarding future development of this site, which was included in the packet.

Staff recommended adoption of the findings of fact within staff report WZC 17-17, and for approval to the Whitefish City Council.
A report to the Whitefish Planning Board and the Whitefish City Council regarding a request by the 95 Karrow LLC to rezone the site formerly known as Idaho Timber, from WI (Industrial District) to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed-Use Transitional). This request is scheduled before the Whitefish Planning Board for public hearing on Thursday, **September 21, 2017** at 6:00 PM. A recommendation will be forwarded to the City Council for a subsequent public hearing on Monday, **October 2, 2017** at 7:10 PM. Both hearings will be held in the Whitefish City Council Chambers.

**PROJECT SCOPE**

The zone change request on Tract 1 of COS 9540 from WI (Industrial District) to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed-Use Transitional) as part of the implementation of Highway 93 W Corridor Plan approved by the Whitefish City Council in 2015. Tract 1 is located at the north end of Karrow Avenue and is bounded by the BNSF railroad to the north, the Whitefish River to the north and east, the Veteran's Peace Park to the west and unimproved W 1st Street to the south. The project is located within the city limits.

**Purpose of WI-T:** The WI-T district is “intended for the gradual transition on vacant or underutilized sites that were traditionally used for heavy manufacturing to adaptive, clean industries and business incubators. These sites are generally proximate to the downtown, have existing high capacity utility services and existing multimodal transportation opportunities such as rail and highway access. The applicable boundary of this district is along the north side of West 1st Street east of Murray Avenue to the BNSF railway corridor and where a buffer of mixed use zoning shall separate it from the Whitefish River. This zoning classification is not intended for general application throughout the Whitefish area.”

<table>
<thead>
<tr>
<th>WI-T (proposed zoning)</th>
<th>WI (existing zoning)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum lot area:</td>
<td>n/a</td>
</tr>
<tr>
<td>Front yard setback:</td>
<td>25-feet</td>
</tr>
<tr>
<td>Side yard setback:</td>
<td>10-feet (20-feet when adjacent to residential zone or park)</td>
</tr>
<tr>
<td>Rear yard setback:</td>
<td>20-feet</td>
</tr>
<tr>
<td>Maximum height:</td>
<td>35-feet</td>
</tr>
<tr>
<td>Permitted lot coverage:</td>
<td>70%</td>
</tr>
</tbody>
</table>

**Purpose of WT-3:** The WT-3 district is “intended for transitional development including high density residential, professional offices, light manufacturing, light assembly and ancillary services to provide a performance based mixed use environment with a recreational amenity, a community gateway, and adaptive use areas which are transitioning from their traditional uses and lots that primarily border either the Whitefish River or industrial zoned property. The
boundary of this district is along the north side of Highway 93 from both sides of North Karrow Avenue to the Whitefish River. This zoning classification is not intended for general application throughout the Whitefish area.”

<table>
<thead>
<tr>
<th>WT-3 (proposed zoning)</th>
<th>WI (existing zoning)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum lot area:</td>
<td>n/a</td>
</tr>
<tr>
<td>6,000 square feet</td>
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<tr>
<td>(single family dwelling)</td>
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<td>3,000 square feet/dwelling unit</td>
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<td>for multi-family</td>
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<tr>
<td>Front yard setback:</td>
<td>30-feet</td>
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<td>25-feet</td>
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<tr>
<td>Side yard setback:</td>
<td>5-feet</td>
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<td>10-feet (15-feet for two story)</td>
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<td>Rear yard setback:</td>
<td>5-feet when abutting an alley;</td>
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<td>20-feet</td>
<td>15-feet when abutting a public street or highway; 20-feet</td>
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<td>when abutting a residential or resort district</td>
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<td>Maximum height:</td>
<td>35-feet</td>
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<td>35-feet</td>
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<tr>
<td>Permitted lot coverage</td>
<td>70%</td>
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<td>50%</td>
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A. **Applicant:**
95 Karrow llc  
Casey Malmquist  
1863 13th Street W  
Columbia Falls, MT 59912

**Property Owner:**
Wayside Property Holdings Inc  
PO Box 4508  
Whitefish, MT 59937

**Technical/Professional:**
Bruce Boody Landscape Architect Inc  
301 E 2nd Street, 1B  
Whitefish, MT 59937

B. **Location and Size:**
The subject properties are located at 95 Karrow Avenue and can be legally described as Tract 1 of Certificate of Survey No. 9540 in S35 & 36 T31N R22W. The property totals approximately 14.08 acres in size.

C. **Existing Land Use, Zoning and Growth Policy Designation:**
The properties are the site of the now closed Idaho Timber lumber mill. There are existing industrial buildings and hard surface paving. The existing zoning is WI (Industrial District). The Growth Policy identifies the parcels as ‘Industrial Transitional’ and ‘Neighborhood Mixed Use Transitional’ in the Highway 93 W Corridor Plan, which is an amendment to the 2007 Whitefish City-County Growth Policy.

The text within the Corridor Plan relating to the Industrial Transitional classification states:

“This designation is for areas that are proximate to the downtown and have traditionally been used for heavy manufacturing. These areas are either vacant or underutilized and have opportunities for a gradual transition to adaptive, clean industries and business incubators. There are existing high capacity utility services and existing multi-modal transportation opportunities such as rail and highway access in these areas. Transitional areas can be the catalyst that generates new jobs and new economic development as businesses achieve success and
relocate appropriately in the community. These areas have easy access to the downtown where the new workforce creates additional demand for goods and services and existing police and fire services can be utilized. The applicable zoning district is WI-T.”

The text within the Corridor Plan relating to the Neighborhood Mixed Use Transitional classification states:

“This designation is applied to neighborhoods near downtown Whitefish and along major transportation routes that have a strong historic character that varies across a range of uses from manufacturing to residential workforce housing. Key characteristics of the neighborhood include being a community gateway, frontage along the Whitefish River, employment and recreational uses close to homes, opportunity for adaptive use or zoning that allows for a variety of uses and within walking distance of shopping in downtown. These characteristics create opportunities for the transition from historic uses to more contemporary uses. As new, diverse uses appear in these traditional neighborhoods a land use trend is created where professional uses and higher density residential uses appear. Densities generally range from 2 to 16 units per acre. Townhomes, apartments and condominiums are also acceptable. The neighborhood may include single-use or mixed-use buildings. The applicable zoning districts are WR-3, WR-4, and WT-3 with appropriate conditional uses and PUD options as well as Architectural Review Standards.”

Highway 93 W Corridor Plan (adopted 2015):
In 2015, the Whitefish City Council adopted the Highway 93 W Corridor Plan that included the Idaho Timber site. This property was included as part of the corridor study as an opportunity for redevelopment. Through the public process many potential opportunities were identified including lower intensity industrial/manufacturing uses, proximity to the railroad and access to the Whitefish River, which has become a major draw in recent years. Out of the public process, the plan identified two land uses and two zoning designations for the Idaho Timber property to transition the site from heavy industrial uses to more mixed-use and adaptive, clean industries. The Plan further described the City initiating a zoning text
amendment to develop the two zoning designations – WI-T and WT-3. These Districts were approved by the Whitefish City Council in 2016.

D. **Adjacent Land Uses, Zoning and Growth Policy Designations:**

North:  
BNSF Railroad  
I-2  
Planned Industrial

South:  
Residential  
WR-3  
High Density

East:  
BNSF Railroad  
I-2  
Planned Industrial

West:  
Veteran’s Peace Park  
I-2  
Planned Industrial

E. **Public Notice:**

A notice was mailed to adjacent land owners within 150-feet of the subject parcels on September 1, 2017. Advisory agencies were noticed on September 1, 2017. A notice was published in the Whitefish Pilot on September 6, 2017. As of the writing of this report, no public comments have been received.

F. **Utilities:**

- Sewer:  
  City of Whitefish
- Water:  
  City of Whitefish
- Solid Waste:  
  North Valley Refuse
- Electric:  
  Flathead Electric Co-op
- Natural Gas:  
  Northwest Energy
- Phone:  
  Centurylink
- Police:  
  City of Whitefish
- Fire:  
  City of Whitefish
- Roads:  
  City of Whitefish
REVIEW AND FINDINGS OF FACT:
This request is reviewed in accordance with the Whitefish zoning regulations, Section 11-7-12 and based on statutory criteria on the purposes of zoning (76-2-303 – 305 M.C.A.).

The Whitefish zoning regulations set forth the process for rezoning properties and the considerations that both the Planning Board and the City Council must make in order to approve an amendment. While some of these considerations are not applicable as the existing and proposed zoning districts already address them, several considerations need to be reviewed in light of the proposed zoning district. The following is a review and discussion of considerations applicable to the proposed zoning district.

A. Made in Accordance with a Growth Policy.
The Highway 93 W Corridor Plan, an amendment to the Whitefish City-County Growth Policy, Future Land Use Map designates the parcels as within the Industrial Transitional and the Neighborhood Mixed Use Transitional designations. The proposed change to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed-Use Transitional) are consistent with the Industrial Transitional and the Neighborhood Mixed Use Transitional designations.

Finding 1: The proposed zone change to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed-Use Transitional) are in accordance with the Growth Policy because it complies with the Industrial Transitional and the Neighborhood Mixed Use Transitional land use designations identified in the Highway 93 W Corridor Plan.

B. Secure safety from fire, panic and other dangers.
The properties are served by the City of Whitefish Police and Fire Departments. Any future development will meet all City requirements for roadway widths and Fire Department standards.
Finding 2: The proposed zone change will secure safety from fire, panic and other dangers because the city standards and zoning standards will be reviewed at the time of development.

C. **Promote the public health, public safety and general welfare.**
Public services and utilities are available to the properties and will be extended to serve the site.

Finding 3: The proposed zone change promotes public interest, health, comfort and general welfare because public services are available to the properties.

D. **Facilitate the Adequate Provision of Transportation, Water, Sewerage, Schools, Parks and other Public Requirements.**
Water and sewer are available, the properties are adjacent to a City maintained road, which is paved. The school district will not change due to the requested zone change, and the subject properties are located adjacent to the Veteran’s Peace Park, a privately owned and maintained park, and are near the Grouse Mountain Fields and City Beach.

Finding 4: The proposed zone change facilitates the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because it is located inside city limits and is served by all public services and facilities.

E. **Reasonable Provision of Adequate Light and Air.**
The proposed zoning designation include setbacks, maximum building height and lot coverage. In addition, all construction will require conformance with the Building Code.

Finding 5: The proposed zone change provides reasonable provision of adequate light and air because the zoning and other city standards will prevent the overcrowding of the land through lot coverage, setbacks and conformance with the Building Code.

F. **The Effect on Motorized and Non-motorized Transportation Systems.**
The properties are located in the city limits and are served by Karrow Avenue, a paved City maintained road. The proposed zone change from WI (Industrial District) to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed-Use Transitional) Highway 93 S has a sidewalk, but it does not connect into this property. As the project develops, issues surrounding motorized and non-motorized transportation will be carefully reviewed.

Finding 6: The proposed zone change will not have an effect on motorized and non-motorized transportation systems because there is not a development proposal and issues surrounding transportation will be carefully reviewed at the time of development permit requests.

G. **Promotion of Compatible Urban Growth.**
The subject properties are located in an area identified as Industrial Transitional and the Neighborhood Mixed Use Transitional land use designations by the Highway 93 W Corridor Plan which is an amendment to the Whitefish City-County Growth Policy. The Growth Policy designates Industrial Transitional as including WI-T (Industrial
Transitional District) zoning and Neighborhood Mixed Use Transitional WT-3 (Neighborhood Mixed-Use Transitional). Therefore, the proposed zone change will promote compatible growth for the surrounding area.

**Finding 7:** The proposed zone change will promote compatible urban growth because the properties are served by public services, and the proposed zoning designations are promoting the Highway 93 W Corridor Plan.

**H. Consideration to the character of the district and its particular suitability for particular uses.**

The character of the district is predominately industrial with single family residential to the south. The Highway 93 S Corridor Plan, adopted by the Whitefish City Council in 2015, considered the character of the district and its particular suitability for particular uses during plan and zoning development.

**Finding 8:** The proposed zone change considers the character of the district and its suitability for particular uses because it is implementing the adopted Highway 93 W Corridor Plan.

**I. Conserving the Value of Buildings.**

The subject properties are currently vacant industrial buildings and land. The Highway 93 S Corridor Plan, adopted by the Whitefish City Council in 2015, considered the character of the district during plan and zoning development; therefore, the value of surrounding buildings will not be negatively impacted by the proposed zone change.

**Finding 9:** The proposed zone change will conserve the value of buildings because the request is to implement the zoning anticipated within the Highway 93 W Corridor Plan approved by the Whitefish City Council in 2016.

**J. Encouraging the Most Appropriate Use of Land Throughout the Jurisdictional Area.**

As previously stated, the area encompassing the subject properties is listed as The Highway 93 W Corridor Plan, an amendment to the Whitefish City-County Growth Policy, Future Land Use Map designates the parcels as within the Industrial Transitional and the Neighborhood Mixed Use Transitional designations. The proposed zoned change to WI-T (Industrial Transitional District) zoning and Neighborhood Mixed Use Transitional WT-3 (Neighborhood Mixed-Use Transitional) would encourage the most appropriate use of land as it was identified through the public process that both the WI-T and the WT-3 would be the most appropriate for the area.

**Finding 10:** The proposed zone change encourages the most appropriate use of land throughout the jurisdictional area because it will be implementing the Highway 93 W Corridor Plan.
K. That Historical Use and Establish Use Patterns and Recent Change in Use Trends will be Weighed Equally and Consideration not be Given One to the Exclusion of the Other.

Historical use of the property was high intensity industrial use. The proposed change to industrial transitional considers the former use patterns and anticipates the trend toward light industrial and residential uses.

**Finding 11:** The Planning Board and the City Council should consider the historical and established use patterns, including trends, when making a decision on the project.

**RECOMMENDATION**
It is recommended that the Whitefish Planning Board adopt staff report WZC 17-19 findings of fact and recommend to the Whitefish City Council the zoning map amendment be approved.
Public Notice of Proposed Land Use Action

The City of Whitefish would like to inform you that Karrow 95 llc is proposing to rezone three parcels from WI (Industrial and Warehousing District) to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed Use Transitional District) in conformance with the 2015 Highway 93 W Corridor Plan. The property is currently partially developed with a vacant building formerly used by Idaho Timber and is zoned WI (Industrial District). The property is located at 95 Karrow Avenue and can be legally described as Tracts 4BA, 4C, 4F in S36 T31N R22W, P.M.M., Flathead County.

You are welcome to provide comments on the project. Comments can be in written or email format. The Whitefish Planning Board will hold a public hearing for the proposed project request on:

Thursday, September 21, 2017
6:00 p.m.
Whitefish City Council Chambers, City Hall
1005 Baker Avenue, Whitefish MT 59937

The Whitefish Planning Board will make a recommendation to the City Council, who will then hold a public hearing and take final action on Monday, October 2, 2017 at 7:10 p.m., also in the Whitefish City Council Chambers.

On the back of this flyer is a site plan of the project. Additional information on this proposal can be obtained at the Whitefish Planning Department located at 510 Railway Street. The public is encouraged to comment on the above proposals and attend the hearings. Please send comments to the Whitefish Planning Department, PO Box 158, Whitefish, MT 59937, or by phone (406) 863-2410, fax (406) 863-2409 or email at wcompton-ring@cityofwhitefish.org. Comments received by the close of business on Monday, September 11, 2017, will be included in the packets to the Planning Board members. Comments received after the deadline will be summarized to the Planning Board members at the public hearing.
Date: September 1, 2017

To: Advisory Agencies & Interested Parties

From: Whitefish Planning & Building Department

The regular meeting of the Whitefish Planning Board will be held on Thursday, September 21, 2017 at 6:00 pm in the Whitefish City Council Chambers at 418 E Second Street. During the meeting, the Board will hold a public hearing on the item listed below. Upon receipt of the recommendation from the Planning Board, the Whitefish City Council will hold a subsequent public hearing on Monday, October 2, 2017. City Council meetings start at 7:10 pm at 418 E Second Street in the Whitefish City Council Chambers on the second floor.

1. A request by the City of Whitefish to rezone one parcel annexed into City limits from County R-3 (One-Family Residential) to WR-1 (One-Family Residential District). The property is located at 2385 Mountain Shadows Drive in S14 T31N R21W. WZC 17-16 (Minnich)

2. A request by the City of Whitefish to rezone one parcel to remove the expired Planned Unit Development overlay on the project formerly known as Coldwater Basin to WLR (One-Family Limited Residential District). The property is unaddressed located on Big Mountain Road (Tract 2B) S12 T31N R22W. WZC 17-17 (Compton-Ring)

3. A request by the City of Whitefish to rezone twelve parcels to remove the expired Planned Unit Development overlay on the project formerly known as Lookout Ridge to WRR-1 (Low-Density Resort Residential District) and WA (Agricultural District). The properties are unaddressed, 3301 Big Mountain Road and 3300 Whitefish Lookout Road S12 T31N R22W. WZC 17-18 (Compton-Ring)

4. A request by 95 Karrow llc to rezone three parcels from WI (Industrial and Warehousing District) to WI-T (Industrial Transitional District) and WT-3 (Neighborhood Mixed Use Transitional District) in conformance with the 2015 Highway 93 W Corridor Plan. The properties are located at 95 Karrow Avenue in S36 T31N R22W. WZC 17-19 (Compton-Ring)

Documents pertaining to this agenda item are available for review at the Whitefish Planning & Building Department, 418 E Second Street, during regular business hours and on the City’s webpage: [www.cityofwhitefish.org](http://www.cityofwhitefish.org) under Planning Board. Inquiries are welcomed. Interested parties are invited to attend the meeting and make known their views and concerns. Comments in writing may be forwarded to the Whitefish Planning & Building Department at the above address prior to the
hearing or via email: dtaylor@cityofwhitefish.org. For questions or further information regarding these proposals, phone 406-863-2410.
INSTRUCTIONS:

☐ A pre-application meeting with planning staff is required. Date of pre-application meeting:

☐ Submit the application fee, completed application and appropriate attachments to the Whitefish Planning & Building Department a minimum of **forty five (45) days prior** to the Planning Board meeting at which this application will be heard.

☐ The regularly scheduled meeting of the Whitefish City Planning Board is the third Thursday of each month at 6:00 PM in the City Council Chambers at 1005 Baker Avenue.

☐ After the Planning Board hearing, the application is forwarded with the Board’s recommendation to the next available City Council meeting for hearing and final action.

A. PROJECT INFORMATION:

Project Address: 95 Karrow

Assessor’s Tract No.(s) 4BA, 4C, 4F Lot No(s) n/a

Block # n/a Subdivision Name n/a (Tract 1, COS 9540)

Section 36 Township 31N Range 22W

I hereby certify that the information contained or accompanied in this application is true and correct to the best of my knowledge. The signing of this application signifies approval for the Whitefish staff to be present on the property for routine monitoring and inspection during the approval and development process.

Owner’s Signature

Wayside Property Holdings Inc.

Print Name

Date

Applicant’s Signature

Casey Malmquist/95 Karrow LLC

Print Name

Date

Representative’s Signature

Bruce Boody Landscape Architect Inc

Print Name

Date

1 May be signed by the applicant or representative, authorization letter from owner must be attached. If there are multiple owners, a letter authorizing one owner to be the authorized representative for all must be included.
APPLICATION CONTENTS:

Attached

ALL ITEMS MUST BE INCLUDED - INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

☑ Zoning Map Amendment Application – 8 copies
☑ Written description how the project meets the criteria in Section D – 8 copies
☑ Map showing the location and boundaries of the property – 8 copies
☑ Reduced copy of the map not to exceed 11” x 17” – 1 copy

Petition for zone change signed by the real property owners representing at least 65% of the land area for which the change in zoning classification is sought – 8 copies
☑ Electronic version of entire application such as .pdf

When all application materials are submitted to the Planning & Building Department, the application will be scheduled for public hearing before the Planning Board and City Council.

B. OWNER(S) OF RECORD:
Name: Wayside Property Holdings Inc.
Phone: 214-405-9628
Mailing Address: P.O. Box 4508
City, State, Zip: Whitefish, MT 59937
Email: donald.pate@sbcglobal.net

APPLICANT (if different than above):
Name: Casey Malmquist/95 Karrow LLC
Phone: 406-249-3100
Mailing Address: 1863 13th St. W
City, State, Zip: Columbia Falls, MT 59912
Email: casey.malmquist@smartlam.com

TECHNICAL/PROFESSIONAL:
Name: Bruce Boody Landscape Architect Inc
Phone: 406-862-4755
Mailing Address: 301 2nd St, Suite 1B
City, State, Zip: Whitefish, MT 59937
Email: boodyla@bruceboody.com

C. PROPOSAL:
CURRENT ZONING DISTRICT: WI
PROPOSED ZONING DISTRICT: WI-T & WT-3

State the changed or changing conditions that make the proposed amendment necessary:

Mixed-use development in newly created Industrial Zoning districts, WI-T & WT-3.
Burlington Northern R.R.  
April 14, 1989

We, Burlington Northern Railroad, the undersigned property owner, hereby certify that the purpose for this division of land (Tracts 1 & 2) is to transfer ownership of the parcel created as an occasional sale. Furthermore, we certify that we are entitled to the use of this exemption in that we are in compliance with all conditions imposed in the use of this exemption; therefore this division of land is exempt from review as a subdivision pursuant to Section 58-2-207 (1)(a), R.C.A.

We also certify that Tracts 1 & 2 are within a master planned area and that municipal services for water supply, sewage disposal and solid waste disposal are available to said tracts of land; therefore said tracts of land are exempt from review by the Municipal Department of Health and Environmental Sciences pursuant to Section 18-4-600, A.R.M.

\[\text{STATE or WASHINGTON} \]
County of Flathead  

MURRAY'S HOMES

On this 28th day of June, 1989, before me, the undersigned, a Notary Public for the State of Washington, personally appeared J. E. HENDRIX and John A. BLOOM, known to me to be officials of the corporation that executed the above instrument and acknowledged to me that such corporation executed the same. In witness whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

[Signature]

S.E. HENDRIX  
Attorney for L & D

\[\text{STATE or WASHINGTON} \]
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C. PROPOSAL:

CURRENT ZONING DISTRICT: W-I Industrial and Warehousing District

PROPOSED ZONING DISTRICTS: WT-3 Neighborhood Mixed-Use Transitional District, and WI-T Industrial Transitional District

State the changed or changing conditions that make the proposed amendment necessary:
On June 1, 2015, the Whitefish City Council adopted (and then on June 15th amended) the Whitefish Highway 93 West Corridor Plan (“Corridor Plan” or “Plan” hereinafter) as an addendum to the city’s Growth Policy. The stated purpose of the Plan was “to propose a more specific policy for land use, development and growth within the corridor as a follow-up to the 2007 City of Whitefish Growth Policy.” Furthermore, the focus of the Plan was “to respect the existing land uses and zoning while allowing for the sensitive, timely and appropriate transition from existing uses to future land uses to benefit the community.” The plan identified “a range of land uses to be integrated into the fabric of the Whitefish community, conform to the goals and objectives of the downtown and that can be accepted by use, process and performance standards by the occupants of the corridor and the community.” As further described below, the subject property (the former Idaho Timber site) was identified as a distinct sub-district within the Plan area and the community’s vision for the site was analyzed and discussed at length.

D. FINDINGS: The following criteria form the basis for approval or denial of the Zone Change. The burden of satisfactorily addressing these criteria lies with the applicant. Review the criteria below and discuss how the proposal conforms to the criteria. If the proposal does not conform to the criteria, describe how it will be mitigated.

1. Made in accordance with a Growth Policy
The Plan’s vision for the Idaho Timber area is “to gradually transition away from heavy manufacturing to adaptive, clean industries and a mixed-use environment while developing the Whitefish River as a recreational amenity.” The Corridor Plan’s “Proposed Future Land Uses Map” designates the subject property as appropriate for “Industrial Transition” and “Neighborhood Mixed-Use Transition” uses. The Plan describes the two land uses as follows:

- **Neighborhood Mixed-Use Transitional:**
  This designation is applied to neighborhoods near downtown Whitefish and along major transportation routes that have a strong historic character that varies across a range of uses from manufacturing to residential workforce housing. Key characteristics of the neighborhood include being a community gateway, frontage along the Whitefish River, employment and recreational uses close to homes, opportunity for adaptive use or zoning that allows for a variety of uses and within walking distance of shopping in downtown. These characteristics create opportunities for the transition from historic uses to more contemporary uses. As new, diverse uses appear in these traditional
neighborhoods a land use trend is created where professional uses and higher density residential uses appear. Densities generally range from 2 to 16 units per acre. Townhomes, apartments and condominiums are also acceptable. The neighborhood may include single-use or mixed-use buildings. The applicable zoning districts are WR-3, WR-4, and WT-3 with appropriate conditional uses and PUD options as well as Architectural Review Standards.

- **Industrial Transitional:**
  This designation is for areas that are proximate to the downtown and have traditionally been used for heavy manufacturing. These areas are either vacant or underutilized and have opportunities for a gradual transition to adaptive, clean industries and business incubators. There are existing high capacity utility services and existing multi-modal transportation opportunities such as rail and highway access in these areas. Transitional areas can be the catalyst that generates new jobs and new economic development as businesses achieve success and relocate appropriately in the community. These areas have easy access to the downtown where the new workforce creates additional demand for goods and services and existing police and fire services can be utilized. The applicable zoning district is WI-T.

The Corridor Plan calls for two new zoning districts to be created to implement the goals of the Corridor Plan/Growth Policy at this location: the WT-3 Neighborhood Mixed-Use Transitional District and the WI-T Industrial Transitional District. The Plan states that “concerns from the public input process are addressed in the new zoning districts.”

The City Council, in March of 2016, added the two new districts to the municipal code. The Corridor Plan indicates that implementation, in terms of rezoning properties to their recommended zoning designations, can be initiated by either the City or by individual landowners.

This application is being made to bring the zoning of the subject property into conformance with the Future Land Use Map of the Growth Policy, and, as a first step toward realization of the vision of the Corridor Plan for this property.

2. **Secure safety from fire and other dangers:**
The subject property is within the Whitefish Fire Service Area. Future development of the property will be reviewed for compliance with all applicable fire safety codes and fire-flow (hydrant) requirements, as well as all applicable building codes. The Fire Department will also review proposed development plans for compliance with requirements for emergency vehicle access to the site and the structures thereon.

3. **Promote public health, safety and general welfare:**
As noted above, the focus of the Corridor Plan was “to respect the existing land uses and zoning while allowing for the sensitive, timely and appropriate transition from existing uses to future land uses to benefit the community.” The plan identified a range of land uses “to be integrated
into the fabric of the Whitefish community, conform to the goals and objectives of the
downtown and can be accepted by use, process and performance standards by the occupants
of the corridor and the community.”

4. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and
other public requirements:
The Corridor Plan addressed the adequacy of public utilities and services in its analysis of
existing conditions within the Plan area. No deficiencies specific to the subject property were
identified, and the act of rezoning the property as requested will not, in itself, affect public
utilities or services. If future development of the site results in impact to any municipal service
or public requirement, the city has the authority to require mitigation of those impacts.

- The recent reconstruction of Highway 93 West included intersection improvements at
  Karrow Avenue, which provides access to the subject property. Future development of
  the subject property may require improvements, at the developer’s expense, to Karrow
  Avenue north of Highway 93 West.

- The City recently replaced and up-sized the existing 6-inch water main and the 8-inch
  sewer main to 12-inch mains along US Highway 93 West. These upgrades were made, in
  part, to accommodate the future growth anticipated by the Corridor Plan and Growth
  Policy. There is also an 18-inch water main in place west of the site near the east
  property line of the adjacent Peace Park property. Preliminary discussions with Public
  Works indicate that future development of the subject property could connect to that
  main. Extension of and connections to public utilities are the responsibility of the future
  developer of the property.

- Given the nature of the transitional zones being requested, and the land uses allowed
  therein, impacts on the local school district are difficult to judge. Many forms of
  residential uses are permitted in the WT-3 district, including detached and attached
  (condominiums, townhomes) single-family units, duplexes, tri-plexes and multi-family
  units (four-plexes and larger). Within the WI-T district residential uses are limited to
  work-live units. At the time of subdivision and development of the site any impact on
  the district will have to be addressed and mitigated by the developer.

- With respect to parkland, it will be the developer’s responsibility to provide parkland at
  the time of any residential subdivision. The Growth Policy anticipates improvements to
  and extensions of the City’s existing bike-pedestrian trail system in conjunction with the
development of this site. This will provide connectivity to City Beach via the Skye Bridge
  and to other parkland in the area.

5. Provide reasonable provision of adequate light and air:
Development standards in each of the transitional zoning districts that are being requested
address building bulk, scale and height, minimum lot sizes, minimum yard sizes (setbacks),
maximum lot coverage, and landscaping requirements. When applied to future development of
the property, these standards (as well as applicable building codes) insure that adequate light and air is provided.

6. The effect on motorized and nonmotorized transportation systems:
While a zone change itself will not affect these systems, the subsequent development of the property under consideration will likely have some impact. At this time the site generates no traffic as it is vacant land. Development of the property to any degree will increase traffic. The city has development standards and regulations which are designed to accommodate development while minimizing the impact of that development. The Corridor Plan took into consideration the potential impacts of implementing the goals and policies contained in the Plan. Improvements to Highway 93 and key intersections within the Plan area were done in anticipation of the changes in zoning and land use advocated by the Plan.

Any negative impact to the local transportation system brought about by future development of the site will have to be mitigated by the owner/developer of the property.

Development of this site will have a significant and positive impact on the city’s non-motorized transportation system, in that it introduces opportunities to extend and improve the city’s bike/pedestrian trail system as called for in the 2017 Connect Whitefish Bicycle and Pedestrian Master Plan.

7. Promote compatible urban growth:
Please refer to the responses to #s 1 and 3, above.

8. Consider the character of the district and its particular suitability for particular uses:
From the Corridor Plan:
“The public involvement process included a series of meetings with the Steering Committee and three public input sessions, one of which was a design charrette for the Idaho Timber site.”

“The third public input session was held on December 12, 2013 as a design charrette focusing on the Idaho Timber site. A charrette is a collaborative, visioning exercise that takes place in many disciplines, often in land use planning or urban planning. Charrettes have become a technique for consulting with all stakeholders and involving them in the design and planning effort. The session involved four groups of community and planning team members that generated four different scenarios for the re-development of the Idaho Timber site. The conceptual plans responded to the uses surrounding the site, the Whitefish River, railroad, housing, and the Great Northern Veterans Peace Park, and looked to incorporate a variety of uses on the site.” Attached is Appendix C of the Plan, a summary of the charrette.

Additionally, the Plan included the following recommended guidelines:
“The vision for the Idaho Timber Area is to gradually transition away from heavy manufacturing to adaptive, clean industries and a mixed-use environment while developing the Whitefish River as a recreational amenity. Two new zoning districts, WI-T and WT-3, will be used to accomplish this transition. The transition will be initiated by the landowner or the City at a
suitable time to remain sensitive to existing uses. Concerns from the public input process are addressed in the new zoning districts.”

9. **Conserving the value of buildings:**
The sole structure within the proposed zoning districts is a vacant warehouse building that could potentially be incorporated into any future development of the site. Building (and property) values in the immediate area of the subject property will not be negatively affected by the requested rezoning. Future development of the property, done within the parameters of the proposed zoning district(s) and in conformance with the City’s Growth Policy, will replace a vacant, abandoned industrial site.

10. **Encourage the most appropriate use of land throughout the jurisdictional area:**
According to the Corridor Plan, “(T)he Idaho Timber site presents opportunities to diversify the City’s economy. This could potentially occur through the development of business incubators which can benefit the community in a number of ways. These include creating jobs, fostering a community’s entrepreneurial climate, technology commercialization, diversifying local economies, building or accelerating growth of local industry clusters, business creation and retention, encouraging women or minority entrepreneurship, identifying potential spin-in or spin-out business opportunities, and community revitalization.”
Please refer also to the responses to #s 1 and 8, above.

11. **That historical uses and established use patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other:**
The Corridor Plan considered the evolution of the neighborhood, and, after considering significant public input, concluded that “(H)istorically, this site has had an industrial use, but Steering Committee members indicated, on the survey, that it is not important to maintain the historical industrial character of this area. The site can accommodate a wide-variety of adaptive uses or redevelopment options. While the existing potential of the site includes a heavy industrial use or a combination of heavy and light industrial uses, the community envisions an adaptive use or redevelopment of the site beyond its potential for industrial uses. This vision includes land uses that could be of a lower intensity including manufacturing or an industrial component at a reduced scale to allow for additional uses on the site.”
The following list of possible uses was given to each of the tables:

- Furniture Manufacture
- Kayak/Canoe Rental Sales
- Hotel/Restaurant Complex
- Green Building Component Manufacture
- Seafood/Specialty Restaurant
- River Trail, Residential
- Cottages/Cabins
- Athletic Field
- VoTech School
- Recreational Gear Fabrication/Manufacture
- Trader Joe Style Specialty Food Store
- Museum
- Mid-Rise Apartments or Condominiums Craft/Flea Market Facility
- High-Tech Electronic Manufacturing Business
- Streambank Restoration Interpretive/Conservation Area
- Offices, Sculpture/Art Foundry
- Low Income Housing
- Challenge Athletic Course
- Fairgrounds
- Marina
- Playground
- Memorial
- Transportation Terminal
- Truck Yard
- Municipal
- Pet Kennel and Care
- Equestrian Center
- Tavern, Club
- Casino/Hotel
- Satellite Fire Station
- Music Conservatory
- Townhomes
- Bistro/Coffee/Wine Shop
- Day Care Facility
- Church
- Senior’s Housing
- Brewery
- Health Services
- Bakery
- Recording Studio
- Antique Restoration/Repair
- Park
- Arena Sport Complex
- Art Gallery(s)
- Private Grade School
- Youth Organization
- Single-Family Homes
- Parking Lot
- Transit Station
- Delicatessen
- Specialty Metal or Wood Fabrication
- Warehousing or Storage Units
- Laboratory
- Tourist Info Facility
- Farmers Market Site
- Modular Home Park
- Botanical Garden/Arboretum
- Salvage Yard
- Body and Paint Shop
- Boat Storage
- Truck or Equipment Sales
- RV Park
- Building Contractor Office and Storage
- Cottage Industry
- Snack Bar
- Night Club
- Health Food Store
- Research Facility
- Antique Mall
- Novelty Shop
- Discount Outlet
- Boat/Marine Dealership
- Recycling Center
- Swap Meet/Flea Market
- Resort Lodge
- Distribution Plant
- Wholesale Market
- Musical Instrument Manufacture
- Graphic Arts Shop
- Welding Shop
- Nursery

Finally, the charrette closed by giving Idaho Timber representatives a chance to address the entire group followed by a short presentation by Innovative Timber Systems, Inc. regarding their possible purchase and use of the property.
Appendix C: Charrette Summary

The following are the final drawings from each group that participated in the charrette.

Key Ideas:

- Leave existing industrial building
- Utilize rail spur
- Provide access from Karrow Avenue
- Shared parking to be used for industrial building during the day and park during the evening
- Multi-family workforce housing in the back of single-family lots
- Green belt zone by river
Group 2 Concept Development Plan

Key Ideas:
- Conservation area along river with a trail
- Provide access off Karrow Avenue
- Keep industrial building
- Offices with docks and view of the river
- Scenic railroad
  - Rail access on first floor
  - Retail/office with view of mountains on second floor
- Skating
- Multi-family housing with spur road
- Resort/mixed use along river
Appendix C: Charrette Summary

Group 3 Concept Development Plan

Key Ideas:
- Railroad spur with manufacturing
- Mixed-use/resort uses along river maximizing views
- Incubator for emerging businesses
- Non-motorized boat launch
- Mixed-use live-work housing
Appendix C: Charrette Summary

Key Ideas:
- River walk/trail system
  - Tie into railroad tracks and access Peace Park
- Light manufacturing by Peace Park
- Entertainment district for people living nearby or coming down the river walk
- Residential component
- Trail that loops under railroad tracks
- Additional river access sites

Group 4 Concept Development Plan
The following paragraph describes the boundary of the proposed WI-T zone:

That portion of the Northeast one-quarter or the Northeast one-quarter (N.E.1/4 N.E. 1/4) of Section thirty-five (35), Township thirty-one North (T 31N), Range twenty-two West (R 22W), Principal Meridian Montana, Flathead County, Montana, described as follows:

Commencing at the Northeast corner of said Section 35; thence S 00° 14’ 05” E and along the east boundary of said Section 35 a distance of 190.90 feet to a point on the south line of the Burlington Northern Railroad right of way; thence N 88° 15’ 47” W and along the southerly boundary of the Burlington Northern Railroad right of way a distance of 171.87 feet to the TRUE POINT OF BEGINNING; thence N 88° 15’ 47” W a distance of 102.96 feet. Thence, S 00° 03’ 52” W for a distance of 127.66 feet to a point on a line. Thence, S 89° 56’ 08” E for a distance of 96.63 feet to a point on a line. Thence, S 00° 00’ 00” E for a distance of 522.77 feet to a point on a line. Thence, S 89° 33’ 33” E for a distance of 188.60 feet to a point on a line. Thence, S 00° 24’ 44” W for a distance of 43.92 feet to a point on a line. Thence, S 89° 24’ 49” E for a distance of 400.31 feet to a point on a line. Thence, N 10° 08’ 55” E for a distance of 66.01 feet to a point on a line. Thence, N 29° 34’ 36” E for a distance of 130.43 feet to a point on a line. Thence, N 60° 25’ 24” W for a distance of 716.67 feet to a point on a line. Thence, N 29° 29’ 43” E for a distance of 118.97 feet to a point on a line. Thence, N 56° 46’ 38” W for a distance of 111.70 feet to the POINT OF BEGINNING, and containing 5.692 acres of land, more or less.

The remaining parcels containing 0.19 acres and 8.138 acres of land respectively, are comprised of Tract 1 of the original COS 9540, less the above described WI-T parcel. These parcels are proposed to be zoned WT-3.
To: Whitefish City Planning Board  
9/21/17  
RE: 95 KARROW LLC, ZONE CHANGE, STAFF REPORT WZC 17-19

Citizens for a Better Flathead offers the following comments and questions regarding this proposed zone change. We would like to have the applicant provide additional information on the following.

1. **Question:** Why did the applicant choose to attach to their application Appendix C: Charrette Summary from the WHITEFISH HIGHWAY 93 WEST CORRIDOR PLAN? Appendix C was not adopted as part of the zoning for this corridor. As part of this hearing record please clarify the applicant’s reasons for attaching this Appendix C to their application. The applicant should be asked to explain, particularly if they intend to make a case that any of the uses included in that design charrette should be allowed in any future uses on this property under the zoning before you or if in a subsequent PUD application they intend to ask that any of these uses be allowed.

2. **Question:** The Planning staff should be asked to clarify what if any encouragement or advice they have provided the applicant in pre-application meetings or subsequent discussions regarding what uses are and are not allowed in this zone request or in future PUD requests.

3. **Request:** Please clarify in your findings for this application that the uses permitted under this zoning request are limited to those specifically adopted by the City Council for these zones they have requested as outlined in the zoning regulations set forth now in the Whitefish Zoning Code.

4. **Question:** The applicant should be asked to clarify what, if any, understanding have been reached with adjoining property owners that might affect parking, access, or other future land use applications for this area covered by this zone request.

5. **Question:** The applicant and the planning staff each should be asked to clarify if it is their understanding that their zoning application is covered under the provision

   **“11-3-29: WATER QUALITY PROTECTION: B-9. Density Calculation:** Density shall be calculated based on the gross acreage of the site. **Land restricted from development within water quality protection areas or their buffers may be used to meet requirements for open space** other than active recreation under section 12-4-11 of this code. Where development is partly prohibited due to the presence of water quality protection areas, as defined in this section, an applicant may be permitted to transfer up to one hundred percent (100%) of the density attributable to the undevelopable area of the property to another portion of the same property, where the director finds that this is consistent with the city’s growth policy and that the following standards are met:
   
   a. The increased density does not significantly harm the water quality protection areas on site or on adjacent properties;
   b. The increased density does not significantly harm wildlife habitat, including migration corridors;
   c. The increased density does not significantly harm the character and qualities of the existing neighborhood; and
   d. Where applicable, the increased density makes efficient use of infill property.

   Where the above standards are met, the normal standards of the underlying zoning district for minimum lot size, setbacks, and lot coverage may be modified to accommodate the increased density.”

6. **Request:** As this over-lay zone was not discussed in the staff report and its findings, we would request that your findings in acting on this application include a finding on this overlay zone.
(This page left blank intentionally to separate printed sections)
An Ordinance of the City Council of the City of Whitefish, Montana, adding a new section to Chapter 1 of Title 5, Police Regulations, of the Whitefish City Code, expressly authorizing Whitefish police officers to make arrests within five miles of City limits.

WHEREAS, § 7-32-4301, MCA, allows a municipality to enact regulations authorizing its police officers to make arrests within five miles of the municipality's boundaries; and

WHEREAS, Montana statutory law and case law recognize several circumstances in which municipal police officers are authorized to make arrests outside of the municipality's boundaries; and

WHEREAS, despite the ability of the City of Whitefish to rely upon Montana statutory law and case law to assert the its police officers have the jurisdiction to make arrests outside its boundaries, it is desirable to expressly authorize the City's police officers to do so to minimize the possibility of wasting time and resources opposing jurisdictional challenges; and

WHEREAS, the City of Whitefish desires to expressly authorize its police officers to make arrests within five miles of the City's boundaries.

NOW, THEREFORE, be it ordained by the City Council of the City of Whitefish, Montana, as follows:

Section 1: A new sub-section is hereby added to Chapter 1 of Title 5, Police, of the Whitefish City Code to provide as follows:

5-1-1: POLICE JURISDICTION:

A. Police Chief And Officers:

1. The chief of police and all the police officers of the city shall serve as peace officers; to prevent intoxication, fights, riots, loud noises, disorderly conduct, obscenity and the acts or conduct which is calculated to disturb the public peace or which is offensive to the public morals, within the city and within three (3) miles of the limits thereof.

2. The chief of police and all the police officers of the city shall have the authority to make arrests of persons charged with crime within the city's boundaries and within five (5) miles of the city's boundaries.

B. Judicial Officials: The city judge is authorized and is empowered to punish, as though the offense were committed within the city limits, all offenses of intoxication, fights, riots, loud noises, disorderly conduct, obscenity and acts or conduct calculated to disturb the public peace or which are offensive to public morals, within the city and within three (3) miles of the city limits thereof.
Section 2: If any section, subsection, sentence, clause, phrase, or word in this section is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this section.

Section 3: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.


______________________________
John M. Muhlfeld, Mayor

ATTEST:

______________________________
Michelle Howke, City Clerk
Staff Report

To: Mayor John Muhlfeld and City Councilors

From: Angela Jacobs, City Attorney

Date: September 26, 2017

Re: Expressly Extending the Jurisdiction of the Whitefish Police

Introduction/History

Police officers generally may not make arrests outside their jurisdiction. Section 7-32-4301, MCA, however, allows a municipality to authorize its police officers to make arrests within five miles of its limits. To date, the City has not passed such an ordinance, instead relying upon Montana statutory and case law exemptions to the general jurisdictional rule. Despite the City’s ability to rely upon these exemptions, it is desirable to expressly authorize the City’s police officers to make arrests within five miles of City limits to minimize the possibility of wasting time and resources opposing jurisdictional challenges.

Current Report

The proposed ordinance provides the Whitefish Police Chief and all City police officers authority to make arrests within the City’s boundaries and within five miles of the City’s boundaries. The ordinance should foreclose any jurisdictional challenges for arrests made in that “donut” area.

It should be noted the City adopted the sub-section directly preceding the new sub-section pursuant to § 7-32-4302, MCA, which allows municipalities the power to enact ordinances to prevent acts or conduct calculated to disturb the peace. The statute provides that such an ordinance can only be enforced within three miles of City limits. However, a city police officer acting within his or her territorial jurisdiction, including the five-mile “donut,” may arrest a person for violation of state law prohibiting offenses against public order.

Financial requirements/Impact

There will likely be no significant financial impacts of authorizing police officers to make arrests within five miles of City limits.

Recommendation

Staff respectfully recommends the City Council adopt Ordinance No. 17-__.
(This page left blank intentionally to separate printed sections)
CITY HALL AND PARKING STRUCTURE PROJECT
The City’s landlord improvements are ongoing. Tenant improvements will begin soon and will continue until they open around December 1st.

ONGOING ITEMS
The Whitefish Strategic Housing Plan Task Force will be receiving a rough draft of the Strategic Housing Plan in the next few weeks. We will then be fine tuning the plan through October leading up to a presentation at a Council Work Session on November 6th.

MEETINGS/ETC.
I spent a lot of my time dealing with the cyberterrorism event by working with the school district, police department, county sheriff’s office, and other law enforcement agencies. I also spent time working with our IT professionals to ensure that our IT security is solid. – I had a couple meetings related to the Lion Mountain area consideration of coming online with the City sewer service.

UPCOMING SPECIAL EVENTS
Oktoberfest – 9/28-30 & 10/5-7
Homecoming – 10/6
Pumpkin Patch Kids Carnival 10/7

REMINDERS/FYI
The City will be conducting “Run, Lock, Fight” Training at City Hall on Friday, October 13th. This training will last all day and City Hall will need to be closed for the duration of the training. This training is vital to workplace safety and will be mandatory for all employees having a significant connection with City Hall. This training has a classroom component and a physical component as we will be practicing the techinies taught. Due to the requirement of everyone’s participation and the active use of City Hall creating and acting out scenarios, it is important that we close City Hall for the day.

Upcoming Work Sessions
October 16th Wastewater Nutrient Variance (5:00pm to 6:00pm)
Curbside Recycling with Evergreen Disposal (6:00pm to 7:00pm)
November 6th Whitefish Strategic Housing Plan Presentation (5:00pm to 7:00pm)
November 20th Committee Interviews
December 4th Committee Interviews

Respectfully submitted,
Adam M. Hammatt, City Manager
MEMORANDUM

To: Mayor Muhlfeld
   City Council Members

From: Dana Smith, Finance Director

Re: Process for including Snow Lot in TIF District

Date: September 22, 2017

History

The unimproved City-owned real property, referred to as the Snow Lot and shown in Exhibit “A”, has been included in the Whitefish Strategic Housing Plan Task Force discussions as a potential site for the development of affordable workforce housing, likely through a private-public partnership. As a result, at the August 7th City Council meeting, staff was directed to begin the process to extend the TIF District boundaries to include the Snow Lot so that tax increment funds on-hand could be allocated to a possible housing project.

Current

Staff has started preparing some of the required documents to amend the TIF District boundaries, but during that time it was determined that the use of the Snow Lot identified in the 2006 Downtown Master Plan changed from high-density residential to use as a parking lot in the 2015 Downtown Master Plan Update, shown in Exhibit “B”. The changes in the 2015 Downtown Master Plan Update were adopted as part of the City’s Growth Policy. Furthermore, the Snow Lot is currently zoned WI, Warehousing and Industrial, which does not permit residential housing.

The process to modify an urban renewal plan to change the boundaries or goals of the plan are controlled by §7-15-4221 MCA as follows:

7-15-4221. Modification of urban renewal project plan. (1) An urban renewal project plan may be modified at any time by the local governing body. If modified after the lease or sale by the municipality of real property in the urban renewal project area, the modification is subject to any rights at law or in equity that a lessee or purchaser or the lessee's or purchaser's successor or successors in interest may be entitled to assert.
   (2) An urban renewal plan may be modified by ordinance.
   (3) Any urban renewal plan proposed for modification to provide tax increment financing for the district must be proposed with consideration for the county and school districts that include municipal territory.
   (4) All urban renewal plans approved or modified by resolution prior to May 8, 1979, are validated.
   (5) A plan may be modified by:
       (a) the procedure set forth in 7-15-4212 through 7-15-4219 with respect to adoption of an urban renewal plan;
       (b) the procedure set forth in the plan, which must include a public hearing.
Under MCA §7-15-4213 MCA, the Planning Board is to review the modification to the Whitefish Urban Renewal Plan (Plan) as to its conformity with the City’s Growth Policy. Therefore, Council will need to begin the process by amending the Downtown Master Plan and updating the Growth Policy to identify the Snow Lot as high-density residential or other similar use that can be used for affordable workforce housing. The zone change should also be updated.

After those updates are made, the steps are outlined as follows:

1. Staff will prepare the documents required for the modification to the Plan, including extending the boundaries to include the Snow Lot and reaffirming affordable workforce housing as a project of the Plan.

2. A Resolution of Intention to modify the Plan will be presented to the Council calling for a public hearing.

3. Staff will provide copies of the modification of the Plan to the Whitefish School District and Flathead County for their consideration, allowing them sufficient time for their consideration. Letters and modification documents will be mailed after approval of the Resolution of Intention. Since the boundary modification is to include a City owned lot that is exempt from property taxes, there will be little impact to the other taxing jurisdictions by adding the Snow Lot.

4. The modification to the Plan and the expressions of consideration from the Whitefish School District and Flathead County will be submitted to the Whitefish Planning Board for their review and recommendations/findings as to its conformity with the Growth Policy. This will be scheduled for the Planning Board meeting following the passage of the Resolution of Intention. The Planning Board has 60 days after receipt of the plan to submit their written recommendation.

5. After receiving the Planning Board’s written recommendation, we will schedule a public hearing on the modification. We have to publish notice of the hearing twice, separated by 6 days as provided in §7-1-4127 MCA and mail notice to the property owners of the property being added to the Tax Increment District boundaries per the Plan and as provided in §7-1-4129 MCA, which must be mailed not less than 10 days prior to the hearing. Pursuant to Ordinance No. 95-6, we also must mail notice to all affected taxing jurisdictions.

6. After the public hearing, if appropriate, the City Council will adopt a resolution of necessity, adopting the statement of blight and declaring the area to be included as blighted and as appropriate for an urban renewal project.

7. Following the public hearing the City Council will also adopt an ordinance approving the modification of the boundaries and reaffirming affordable workforce housing for the Snow Lot as an urban renewal project if it finds that:
(1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project;

(2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole;

(3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and

(4) a sound and adequate financial program exists for the financing of said project.

Financial
If the boundary is extended to include the snow lot and the project is reaffirmed as an approved urban renewal project, the Council can then consider contributing tax increment funds to a project if a request comes forward. Costs for the actual modification of the Plan will be limited to the cost of the publications and mail notice.

Recommendation
Staff respectfully requests direction from the City Council to continue with the process described by first preparing an amendment to the Downtown Master Plan.
EXHIBIT "A"

Date: 9/22/2017

Data Sources:
MT Geographic Information Clearinghouse
City of Whitefish Planning Dept
Flathead County GIS (9/22/2017)