

## COVENANTS AND CONDITIONS OF WHITEPINE CROSSING

Whereas, the Declarant is the owner of Whitepine Crossing, a major subdivision, plat filed \_\_\_\_\_ located in the NW1/4 of the SW1/4 of Section 13, Township 23 North, Range 31 West, MPM, Sanders County, Montana.

Now, therefore, the Declarant does hereby declare that the property above-described shall be sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, covenants, restrictions and conditions shall run with the real property, and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof. The word "lot" as used herein shall refer to each of the ten parcels located in the subdivision.

1. Compliance with Health Regulations: No activity on any lot shall be conducted in violation of any Montana State law, Montana State regulation, or local ordinance or regulation with respect to water supply, sewage disposal, sanitation and air pollution. All sewage disposal systems shall conform to the requirements set forth in the Sanders County septic regulations and any existing State health review and approval.

2. Waste Materials: No lot shall be used or maintained as a dumping or storage area for rubbish, trash, garbage, brush or other waste. All trash, junk, garbage and other waste shall be kept in sanitary and rodent-proof containers. No automobiles, automobile bodies, motor vehicles or parts thereof may be left on the lots in an inoperative condition except during a period not to exceed three (3) months while repairs are being made to such vehicle.

3. Owner's Livestock, Fences and Grazing: Any animals, including dogs, kept by an Owner must be kept or fenced within the boundaries of the Owner's property. No lot owner will be permitted to operate a hog farm, feed lot, or commercial poultry farm on any lot. Excessive barking by any dog is not permitted.

a) Declarant and lot owners shall not be required to participate in or pay for the construction of partition fences between lots. Any lot owner who wishes to fence their lot must bear the expense of fencing unless the neighbor(s) voluntarily participate in the construction of the fence.

b) Even though owners are required to fence in livestock, no owner may bring an action for trespass of livestock unless that owner has a lawful and maintained fence around the perimeter of such owner's lot.

c) Barbed wire fencing shall be prohibited. Smooth wire or split rail fence is the preference. All fencing must be aesthetically pleasing. Wildlife fencing is encouraged, such as a New Zealand fencing.

d) Fencing must be sufficient distance from the creek so as to prevent animal waste from being discharged into the creek during spring runoff or regular drainage.

4. Offensive Activity: No noxious or offensive activity shall be carried on or permitted upon any lot, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood; nor shall the premises be used in any way for any purpose which shall endanger the health, safety or welfare or unreasonably disturb the residents of any lot. No materials or mechanical equipment shall be used in a manner detrimental to the residential use of the surrounding tracts because of vibration, noise, dust, smoke or odor.

5. Equipment Storage: No commercial or industrial logging or construction equipment (including but not limited to crawlers, front-end loaders, skidders, nor any truck of greater than one-ton capacity may be stored or kept on any lot except during the period that such equipment is actively used in the improvement of the lot. Property owners may own and store Farm and Garden tractors sufficient to maintain grounds, gardens, and roads (snow clearing and minor grading) as long as equipment is stored out of sight from adjacent parcels, Dagny Court and Whitepine Creek Road.

6. Commercial Activity: No trade, craft, business, professional, commercial or manufacturing activity of any kind shall be conducted or carried on upon any lot or within any building located on a lot except that arts, crafts or professions or hobbies conducted solely by family members occupying the residence shall be permissible so long as the activity is solely contained in a building and does not conflict with No. 4. No goods, equipment, material or supplies used in connection with any trade, service or business may be visible on the premises or kept, parked, stored, dismantled or repaired on any lot or street within the subdivision.

7. Residential Use: Lots shall be used for single family residential purposes only. No structure shall be erected, altered, placed or permitted to remain on any portion of any lot other than a single family private dwelling of least 1,200 square feet on a single level excluding decks and porches, having a garage no larger than is convenient and necessary for the storage of four (4) automobiles or pickup trucks and such other buildings as may be incidental to residential use of the property. An additional cottage of no less than 750 square feet, nor greater than 1,500 square feet is allowed. Occupancy of the cottage shall be limited to guests and caretakers. Rental or commercial use of the cottage shall be permissible as per Property Lease or Rental section below.

8. Property Lease or Rental: The property may be rented or leased either "long term" or "seasonal" so long as all other provisions of this document are adhered to. Guest houses may be "rented or leased" separate from the primary property domicile for no more than 6 months in any one calendar year. It is the property owners responsibility to inform all lessee's and renters of the covenants and restrictions associated with Whitepine Crossing; the burden of enforcement is also upon the property owner who also assumes all liability for any and all infractions whether caused by the renter/lessee or their guests, invited or not.

9. Building Standards. The following construction standards, shall be followed for all residences placed on the premises:

a) All residential construction once begun shall be completed as to exterior finish within 18 months after the start of construction. Construction shall have been deemed to have started when the ground has been broken in anticipation of a foundation or other structural supports.

b) No residence manufactured off site nor any structure commonly described as a "mobile home," single or double, or any multiple thereof, wide, shall be placed or remain on any lot for any purpose except that recreational vehicles and trailers may be kept and used subject to the conditions set forth in Paragraph 9 below. In anticipation of the great strides toward better construction of manufactured housing a variance of this covenant may be granted by a  $\frac{3}{4}$  vote of the subdivision lot owners determined by 1 vote per lot owned. All roof pitches must match or exceed a 4 /12 pitch.

c) Metal roofs shall be permitted only if they shall have been painted during the course of their manufacture. Bare aluminum, steel, galvanized surfaces or other metallic unpainted-at-factory surfaces, roofing or siding shall not be permitted. Permanent anodizing of the metal surface is included in the intent of painting.

d) Excepting Lot 1 and Lot 5, no residential building nor any appurtenance or outbuilding shall be less than fifty (50) feet from any road, ten (10) feet from exterior property lines and twenty-five (25) feet from any interior lot lines. An owner of two or more lots may use the outside lot lines for the set back and may build across the inside lot line. The setbacks for Lots 1 and 5 shall be ten feet

feet (10') from any lot line or road.

e) Each residence once constructed on a lot shall be kept in the same condition as at the time of its initial completion, excepting normal wear and tear and consistent with the normal understanding of the term "well-maintained property". If all or any portion of a residence is damaged or destroyed by fire or other casualty, the owner thereof shall with due diligence rebuild, repair or reconstruct such residence in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within six (6) months after the damage occurs and shall be completed within Eighteen (18) months after the damage occurs unless prevented by causes beyond the control of the owner. If the owner desires not to rebuild upon destruction of the residence, he shall remove all debris and maintain the lot in a presentable and orderly manner until rebuilding occurs.

f) All garages and outbuildings shall conform in architectural design and exterior appearance to any residence on the same lot. Neither the height nor square footage of the garage or any outbuilding may exceed the height or square footage of the primary dwelling.

10. Timber: Trees within the building area may be removed for driveway or construction purposes, however at least 50% of the trees outside the driveway and building area shall be left or replanted with other species. There shall be only light harvesting or thinning of trees. No clear cut or heavy harvesting allowed.

11. Recreational Shelters: A single recreational vehicle or shelter such as a travel trailer or motor home may be placed upon any lot and used for temporary recreational purposes so long as sanitary facilities are available on the lot and for a period not to exceed six (6) months during any calendar year until such time as a permanent residence is constructed. After the first anniversary of the start of construction of a principal residence on any lot there shall not be permitted any other form of temporary or recreational shelter although such shelters as are above named may be stored on the lots so long as they are not used for residential purposes.

12. Resubdivision: No lot may be further divided.

13. Signs. No signs or billboards for advertising or for any other purposes shall be displayed on any lot or building or structure upon any lot except a sign not exceeding six (6) square feet advertising the property for sale or rent. A similar sign may be located, on self supporting stand, which may be located at the subdivision entry for the purposes of directing potential purchasers to the correct lots. Timely removal and repair of any damage is the sole responsibility of the Property Owner offering the property for sale, lease or rent and must be removed within 3 days of the Property closing an escrow, or being leased or rented.

14. Noxious Weeds. The Property shall be kept free of noxious weeds as defined by the State of Montana or Sanders County. If noxious weeds are found on any Lot, the Lot Owner shall eradicate or commence eradication efforts upon receipt of thirty (30) days advance written notice to do so from the Sanders County Weed District or any Lot Owner. If the Lot Owner fails to commence eradication efforts within thirty (30) days after receipt of written notice to do so, any Lot Owner may commence eradication efforts, and the expense of such eradication efforts shall be the obligation of the Owner of the Lot upon which the noxious weeds are growing.

15. Wildlife: The following items have been incorporated into these Covenants for the purpose of lessening the potential for human/wildlife conflict.

a) All outdoor garbage containers shall be bear proof and shall be stored in enclosed buildings. Garbage containers shall be emptied prior to long absences (two weeks or greater), such as vacations.

b) Pet foods or other bear attractants shall be stored in bear proof containers or in enclosed buildings.

16. Firearms: Except in emergencies for the preservation of life or property, the discharge of firearms shall be prohibited.

17. Roads and Maintenance. This paragraph pertains to the maintenance of a length of private road, (named Dagny Court), which is depicted on the subdivision plat of Whitepine Crossing. These conditions are perpetual and cannot be rescinded or revoked unless the county or state agrees to assume responsibility for maintenance of Dagny Court.

a) To keep and maintain the private road system, an initial yearly maintenance fee of \$200 will be levied against each lot (except that Lot 4 yearly maintenance fee will be initially \$100 with proportional future adjustments). The annual maintenance fee will be adjusted for future inflation and agreed upon community needs by a 75% vote of the Lot Owners. The fees and assessments provided for herein are under the control of the Declarant until such time as 80% of the lots are sold, at which time, a road maintenance administrator shall be elected by the majority of the Lot Owners. Until such time as 80% of the lots are sold, Declarant assumes the responsibility of collecting fees, and arranging for the maintenance, repairs or plowing of snow. This fee ensures that the roads will be maintained for normal access 12 months of the year.

b) Each Owner, his/her guests and invitees and the Declarant shall have a perpetual, non-exclusive easement on Dagny Court as constructed and shown on the Plat. The road is privately owned and maintained by the lot owners. The 60 foot road easement also is for construction and maintenance of utilities and drainage as shown on the Plat. Within these areas, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and or maintenance of the road or such utilities, or which may change the direction of flow of water through a drainage channel in the easement, or which may obstruct or retard the flow of water through drainage channels in the easements. The lot owners shall have the right to excavate, construct, operate, maintain, repair and or rebuild any common improvements within the Road area, provided that each Owner shall have the explicit responsibility for maintaining the landscaping within the landscaped portions of the Road easement. The Declarant may sell the use of this road to the adjacent landowner to the south in addition to utility and bridge use, only with the caveat that the additional landowner/s become a party to the covenants and maintenance agreement.

c) All users of the road subject to this agreement shall use it at their own risk and hazard. No owner shall be liable for any damage or loss of any kind which may be suffered by any person using the road. Accordingly, all persons using the road for any reason are deemed to have consented to the provisions of this paragraph, and waive any claim they may have for any such liability and agree to release and hold harmless and indemnify all owners.

d) The expense of major improvements such as additional gravelling, dust coating or paving, will only be done upon approval of the owners of 75% of the lots.

e) By entering into an installment purchase of a tract of land subject to this agreement or by acceptance of a deed thereof, said owner agrees to pay assessments as may be established by or as subsequently approved pursuant to this agreement. Any assessment not paid by an owner or purchaser shall become a lien on the property and a personal obligation as described below.

- Any unpaid assessment and the costs of collection shall be a charge on the land and shall become a continuing lien on the property against which each assessment is made. This lien shall be subordinate to the lien of any first mortgage. The owner(s) who enters into a contract for the authorized work and the contractor completing the authorized work are entitled to a construction lien by following the procedures outlined in

in the Montana code.

- Each such assessment, together with collection costs and reasonable attorney fees, shall be the personal obligation of the person(s) who was the owner of such property at the time when the assessment fell due. No owner may waive or otherwise escape liability for the assessment provided herein by abandonment of his property or conveyance or transfer of title to the property. This personal obligation shall not pass to a successor on title unless the obligation is expressly assumed by the successor in title.

f) The owners may conduct such meetings as are necessary to discuss maintenance, fix assessments and conduct other business as appropriate.

g) Bridge maintenance: It is understood that the bridge over Whitepine Creek is for the benefit of all lot owners of Whitepine Crossing, and that the maintenance is therefore to the benefit of and the responsibility of all lot owners. At any time should the bridge require maintenance, repair, or structural inspection, the costs shall be born equally by all lot owners, except that the owners of lots 1,2, 3 & 4 shall be charged at a rate of only 30% of the rate of the owners of the remaining lots.

h) It is also understood that the 60 ft. road easement does not end at the cul-de-sac but rather extends, as shown on the Plat, to the south boundary of Whitepine Crossing, and that at some future date Dagny Court may extend to that boundary and access other properties.

- Declarant reserved the right to use Dagny Court for access and buried utilities for future development and subdivision of a contiguous property to the south of Whitepine Crossing for a maximum of 5 lots, designated for residential use. Declarant may assign these rights. Upon development, the rights shall be deemed appurtenant to the new lots. All new lots shall be bound by the terms and conditions of this document.

#### **TERM OF DECLARATION**

The provisions of this Declaration shall run with the land and be binding for a term of fifty (20) years from the date of this Declaration after which time the Declaration shall be automatically extended for successive periods of ten (10) years each unless there shall be recorded an instrument signed by the owners of seventy-five percent (75%) of the lots who agree to terminate these covenants.

#### **AMENDMENT**

This Declaration may be amended by an instrument signed by the owners of seventy-five percent (75%) of the Whitepine Crossing Lots agreeing to such amendment, excepting paragraphs 7 or 12. These covenants may not be repealed or amended without the prior written consent of the Sanders County Commissioners.

#### **ENFORCEMENT**

The Declarant or any owner and any contiguous property owner who is in compliance with these covenants (contiguity shall not be broken by a road), shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, easements, reservations, liens and charges now or hereinafter imposed pursuant to the provisions of this Declaration. The county is not a party to the enforcement of covenants. The failure by the Declarant, or any owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter. The Declarant shall have no duty to take any affirmative action to enforce any restrictive covenants, nor shall they be subject to any liability for their failure to so act.

If any person entitled to do so shall bring formal legal action to enforce any provision of this Agreement, the prevailing party to such action shall be entitled to recover from the other party reasonable attorney's

fees and costs of the action.

It is hereby declared that the Sanders County Justice Court shall have original jurisdiction and be a proper forum for any enforcement action initiated hereunder.

**SEVERABILITY**

Invalidation of any one of these covenants or restrictions by court order, judgment or decree shall in no way affect the remaining provisions which shall remain in full force and effect.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Pursuant to Lot(s) 1 through 10 of Whitepine Crossing

\_\_\_\_\_  
Declarant Whitepine Crossing

STATE OF MONTANA

County of Sanders

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Notary Name:\_\_\_\_\_  
Residing at:\_\_\_\_\_  
\_\_\_\_\_  
My Commission Expires: