

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
AND RECIPROCAL EASEMENTS FOR
HODGE CREEK RESERVE SUBDIVISION**

THIS DECLARATION, made this 26TH day of February, 2003, by MANY LAKES EAST, a Montana partnership, whose mailing address is P.O. Box 1477, Kalispell, Montana 59903-1477 (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the following described land in Flathead County, Montana:

SEE **EXHIBIT "A"** ATTACHED HERETO AND INCORPORATED BY REFERENCE.

WHEREAS, Declarant proposes that said and all future phases of Hodge Creek Reserve Subdivision be developed, sold and improved pursuant to a common plan of development, and desires to place covenants, restrictions and easements upon said Tracts for the benefit of the owners of all of said lands.

NOW, THEREFORE, Declarant hereby declares that all of the above-described property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

1.1 "Architectural Review Committee" shall mean the Architectural Review Committee appointed by the Board of Directors of the Association whose function is to review the plans, elevations, designs and location of structures, landscaping and other improvements to be constructed or erected on any Tract.

1.2 "Association" shall mean Hodge Creek Reserve Homeowners' Association, Inc., a Montana nonprofit corporation, and its successors and assigns.

1.3 "Board of Directors" or "Board" shall mean the duly elected and qualified members of the Board of Directors of the Association.

1.4 "Building Envelope" shall mean the portion of any Tract that does not lie within twenty five (25) feet of the perimeter of the Lot.

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1.5 **“Common Facilities”** shall mean those areas which are to be improved, repaired, and maintained by the Association for the benefit of all Owners, including without limitation all areas within the access easements described below in Article III; together with all driveways, roads, streets, improvements, landscaping, and irrigation systems on or serving the foregoing properties, and all fixtures and appurtenances used therewith or attached thereto, and all tangible and intangible personal property at any time owned or controlled by the Association for the common use and benefit of the Owners.

1.6 **“Declarant”** shall mean Many Lakes East, a Montana partnership, and its successors and assigns.

1.7 **“Declaration”** shall mean this Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements for Hodge Creek Reserve Subdivision, as it may from time to time be amended or supplemented.

1.8 **“Guidelines”** shall mean the design, development and landscaping guidelines which may from time to time be adopted and published by the Architectural Review Committee, which Guidelines may set forth procedures for review of plans and elevations for buildings, structures, and other development on the Tracts and may establish standards and criteria which the Architectural Review Committee expects to follow in reviewing proposed developments within the Subdivision, as the same may from time to time be amended or supplemented.

1.9 **“Improvement” or “Improvements”** shall include buildings, outbuildings, roads, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, water lines, sewer lines, electrical and gas distribution facilities, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, loading areas and all other structures, installations and landscaping of every type and kind, whether above or below the land surface.

1.10 **“Mortgage”** shall mean a Mortgage, Deed of Trust or Trust Indenture.

1.11 **“Mortgagee”** shall mean a Mortgagee under a Mortgage, as well as a Beneficiary under, or holder of, a Deed of Trust or Trust Indenture.

1.12 **“Occupant”** shall mean a lessee or licensee of an Owner, or any other person or entity (other than an Owner) in lawful possession of a Tract with the permission of the Owner.

1.13 **“Owner”** shall mean any person or entity which is the record owner of fee simple title of any Tract, including buyers under a contract for deed, but excluding any entity or person who holds such interest as security for the payment of an obligation, other than a contract seller, Mortgagee, or other security holder in actual possession of a Tract.

1.14 **“Subdivision”** shall mean and refer to Hodge Creek Reserve Subdivision, and all Tracts and Common Facilities contained therein, all of which are subject hereto.

1.15 “Record”, “recorded” or “recordation” shall mean, with respect to any document, the recording or filing of said document in the office of the Clerk and Recorder of Flathead County, Montana.

1.16 “Road” or “Roads” shall mean any driveway, street, highway, road, or thoroughfare within or adjacent to the Subdivision and shown on any recorded subdivision plat, or record or survey, whether designated thereon as driveway, street, avenue or road.

1.17 “Screened from View” shall mean, with respect to any given object on a Tract, that the object is screened by a fence, hedge, or other decorative improvement such that the object is not or would not be visible to a person six (6) feet tall, standing on any part of any adjacent Tract or other property at an elevation no greater than the elevation of the base of the object being viewed.

1.18 “Tract” shall mean a tract as designated on the plat of the Subdivision recorded from time to time in the office of the Clerk and Recorder of Flathead County, Montana.

ARTICLE II SUBJECT PROPERTY

2.1 General Declaration. Declarant hereby declares that all of the Subdivision more particularly described above and all Tracts therein are, and shall be, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration. All of the covenants, conditions and restrictions set forth herein are declared and agreed to be in furtherance of a general plan for the Subdivision and for improvement and sale of the Subdivision, and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision and every part thereof. All of the covenants, conditions and restrictions shall run with all of the Subdivision and the Tracts therein for all purposes and shall be binding upon and inure to the benefit of Declarant and all Owners, Occupants, and their successors in interest as set forth in this Declaration.

2.2 Subdivision of Tracts. None of the Tracts within the Subdivision shall be subdivided, resubdivided, split, altered or reduced in size except in accordance with the following regulations:

2.2.1 During the original fifteen (15) year term of the covenants:

2.2.1.1 Without the express written consent of Glen L. Brist or Brist, Inc., a Montana corporation (collectively referred to as “Brist”), the Declarant shall not be entitled to create more than twenty (20) Tracts.

2.2.1.2 Without the express written consent of Brist, the Declarant shall create no Tract of less than seven and one half (7 ½) gross acres.

2.2.1.3 Owners taking title to Tracts subsequent to Declarant shall be entitled to split their Tract one (1) time on the condition that all resulting Tracts are no less than seven and one half (7 ½) gross acres. Once a Tract, owned by an Owner subsequent to Declarant, is divided once, the resulting two (2) Tracts shall never be divided again.

2.2.2 After the original fifteen (15) year term of these covenants expires, none of the Tracts within the Subdivision shall be subdivided, resubdivided, split, altered or reduced in size to less than seven and one half (7 ½) gross acres.

2.2.3 Throughout the term of these covenants, division of Tracts shall occur only in accordance with State and local governmental rules and regulations.

2.3 **Building Envelope.** All buildings residences, and other structures must be constructed and placed within the Building Envelope. The location of the Building Envelope within each Tract shall not be moved, altered, changed or relocated in any manner whatsoever.

**ARTICLE III
RECIPROCAL EASEMENTS; DEVELOPMENT RIGHTS**

3.1 **Reciprocal Easements Reserved by Declarant.** Declarant hereby creates and reserves, for the benefit of all Owners and the Association, the following reciprocal easements on the affected Tracts in the Subdivision, which shall be for the benefit of the Tracts, and the Owners thereof, their heirs, personal representatives, successors and assigns, and said Tracts shall be servient to the easements hereby created and reserved, and said easements shall be deemed appurtenant to the Tract benefited thereby, as follows:

3.1.1 **Access and Utility Easements.** Easements and rights-of-way for purposes of constructing, installing, maintaining, repairing, relocating and replacing driveways and roadways for providing access, ingress and egress to and from the Tracts in the Subdivision to Ashley Lake Road adjacent to the Subdivision (the "Access Easement") and for constructing, installing, operating, maintaining, repairing, relocating and replacing underground utility lines serving all of the Tracts in the Subdivision, over, along, on and across strips of land shown and depicted, or to be shown and depicted, on the plat or plats of the Subdivision as recorded, or to be recorded, in the office of the Clerk and Recorder of Flathead County, Montana.

All of the foregoing easements and rights-of-way shall be together with the free right of ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing the improvements constructed or installed within the easement area in question.

The foregoing easements and rights-of-way shall inure to the benefit, specifically, of each of the Tracts described in or affected by the easement, and shall be deemed to run with the land, and shall further inure to the benefit of the present and future Owners of said Tracts, and all of said future Owners, their heirs, personal representatives, successors, and assigns, and said Tracts

and Owners shall be subject to the aforesaid easements. Subject to the restrictions set forth in this Declaration and the Guidelines that may be adopted from time to time by the Architectural Review Committee, said easements shall and may be used in common by the Owners of said Tracts, and their permittees, without any segregation of said easements because the same is located over and on any particular Tracts, and the Owners and permittees of the Owners shall have the right of ingress and egress on the lands described in the particular easements, regardless of whether or not such Owners or permittees are using such easements on land owned by such Owner, or on lands owned by the other Owners.

3.2 Right of Access. This Association or its delegated representatives, or the Declarant, shall have the irrevocable right of access to each Tract from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of the Common Facilities accessible therefrom. Such right of access shall be immediate for the purpose of making emergency repairs therein in order to prevent property damage or personal injury. All damaged Improvements shall be restored to substantially the same condition in which they existed prior to the damage. All maintenance, repairs, or replacements of any Tract or any structure thereon shall be at the expense of the Owner thereof. All maintenance, repairs, and replacements of the Common Facilities shall be the common expense of all of the Owners through assessments by the Association; provided, however, that if such damage is caused by a negligent or tortious act of any Owner or members of such Owner's family, or by such Owner's agents, employees, invitees, licensees, or tenants, then such Owner shall be responsible and liable for all such damage. This Declaration establishes no duty upon the Association or the Declarant to maintain, repair, or replace any Tract or any structure thereon, and vests no rights in Owners or any other person as against the Association or the Declarant.

ARTICLE IV ROAD MAINTENANCE AGREEMENT

4.1 Road Maintenance Costs. Each owner hereby agrees to pay such Owner's share of the costs and expenses of maintaining, plowing and repairing the Subdivision's private roadways shown on the plat or plats of the Subdivision as recorded in the office of the Clerk and Recorder of Flathead County, Montana.

4.2 Rate of Assessment. All road maintenance assessments shall be fixed by the Board of Directors based on the Tract's size and proximity to Ashley Lake Road.

4.3 Maintenance Decisions. All decisions regarding road maintenance, plowing and repairing of the private roadways shall be made by the Association's Board of Directors or an Ad Hoc Committee appointed by the Board of Directors pursuant to the procedures set forth in the Association's Bylaws.

4.4 Assessments. All assessments for road maintenance, plowing and repair shall be treated as annual or special assessments of the Association and as such all rules and procedures set forth in Article VI regarding assessments (excluding rate of assessment), liens, meetings, quorums, time periods, interest rates, remedies and subordination shall apply to assessments made for road maintenance, plowing and repair purposes.

**ARTICLE V
HOMEOWNERS' ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

5.1 Membership. Every Owner of a Tract in the Subdivision shall, by acceptance of a deed to such Tract, be a member of the Association and shall be irrevocably subject to assessments by the Association. Membership shall be appurtenant to and may not be separated from ownership of the Tract.

5.2 Classes of Members. The Association shall have one class of members, with the privileges and obligations of such membership defined as set forth in the Articles of Incorporation and Bylaws of said Association.

5.3 Voting Rights. The Owner or Owners shall be entitled to one (1) vote of each Tract owned. The vote for any Tract owned by more than one person shall be exercised as such co-owners may among themselves determine, but in no event shall the vote with respect to any Tract exceed the total of one (1) vote per Tract as herein provided.

5.4 Articles and Bylaws. This Article IV is intended by Declarant to summarize the privileges and obligations of an Owner as a member of the Association. The Declarant, for itself, and each Owner of a Tract by acceptance of a deed thereto, shall be bound and shall abide by the additional terms, conditions and obligations set forth in the Articles of Incorporation and the Bylaws of the Association, as the same may be amended from time to time.

**ARTICLE VI
ASSESSMENTS OF THE ASSOCIATION**

6.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Tract owned within the Subdivision, hereby covenants, and each Owner of any Tract by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Tract at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

6.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Owners and Occupants of the Subdivision, and for the establishment, improvement and maintenance of the Common Facilities situated within the Subdivision, including, but not limited to, the payment of insurance on Common Facilities, maintenance and repair of driveways, roads and easements owned by the Association, snow removal from driveways, roads, easements and parking areas maintained by the Association, for the purpose of maintaining, repairing, replacing, mowing, pruning and cutting the landscaping and irrigation systems within and serving the Common Facilities, and the

cost of labor, equipment, materials, management and supervision with respect to any of the foregoing.

6.3 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Facilities, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty percent (60%) of the votes entitled to be cast by members who are voting in person or by proxy at a meeting duly called for that purpose. Nothing stated herein shall restrict the right of the Association to provide for the repayment of the special assessment over a term of months or years subsequent to the date of such assessment, and upon terms and conditions it deems appropriate, including the collection of interest on the deferred balance.

6.4 Notice and Quorum for Action. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.3 shall be given to all members no less than ten (10) days in advance of the meeting, or if given by certified mail, not less than thirty (30) or more than sixty (60) days in advance of the meeting. At the meeting so called, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, then the Association may not act or proceed upon the proposed action for which notice was given, but nothing herein shall preclude the Association from calling another meeting at any time (subject to the foregoing notice requirements) for the same purpose or purposes.

6.5 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Tracts and may be collected on a monthly basis.

6.6 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Tracts on the date determined by the Board of Directors and shall be assessed on a calendar year basis. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Tract at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Tract have been paid.

6.7 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum, but in no event to exceed the maximum rate permitted under Montana law. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against such Owner's Tract in the same manner as a mortgage on real property, and the Association shall be entitled in any such foreclosure proceedings to recover its costs, expenses and reasonable attorney's fees. No Owner

may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Facilities or by abandonment of such Owner's Tract.

6.8 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. The sale or transfer of any Tract shall not affect the assessment lien whether such lien arises prior to such sale or transfer, or thereafter becomes due. However, the sale or transfer of any Tract pursuant to foreclosure proceedings of such first Mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer, but shall not relieve such Tract from liability for any assessments thereafter accruing or becoming due or from the lien thereof.

ARTICLE VII PROTECTIVE COVENANTS; ARCHITECTURAL REVIEW

7.1 Purpose. The following protective covenants are designed to provide a uniform plan for the development of the Tracts and the Subdivision. The intent of the Declarant in establishing these covenants is to create and maintain a residential area with an atmosphere and charm entirely compatible with the natural environment of the existing property, and further to provide every practical and legal means to safeguard and protect the interests of all Owners and the stability of this development.

7.2 Requirement of Review by Committee. No construction, improvement, or alteration of or affecting the external appearance of any main buildings, secondary buildings, fences, walls, railings, artifacts, or similar improvements, and no landscaping, wire, pipe, utility line, well, driveway or walkway shall be made, erected, altered, placed or permitted to remain upon any Tract until a site plan and elevations showing the design, location, material, color and exterior finish shall have been submitted to and approved in writing by the Architectural Review Committee. In considering applications for approval of a site plan and elevations, the Architectural Review Committee will regard compatibility with site characteristics and neighboring properties as the primary and foremost design objective.

7.3 Membership of Committee. Except as provided herein, the Architectural Review Committee shall consist of three (3) members appointed by the Board of Directors of the Association. At least two of the three members of the Architectural Review Committee shall be members of the Association or the Declarant. Notwithstanding the foregoing, until such time as all of the Tracts have been improved with the construction of a primary residence thereon, Paul D. Wachholz is hereby and shall hereafter be appointed to the Architectural Review Committee. Until such time as three (3) Tracts have been improved with the construction of a primary residence thereon, Paul D. Wachholz shall be the sole member of the Architectural Review Committee.

7.4 Guidelines. The Architectural Review Committee may publish Guidelines which set forth the procedures and criteria for review of residences, improvements or other structures to be constructed or installed on any Tract in the Subdivision, and for review of landscaping plans. Failure to follow procedures or criteria set forth in the current published Guidelines shall form an

adequate basis for rejection of the submitted site plan and elevations; provided, however, that this requirement shall not be construed as preventing Declarant or the Architectural Review Committee, at their option, from waiving or amending the Guidelines at any time or with respect to any application. Failure to follow such procedures or criteria set forth in the Guidelines shall also be deemed a breach of this Declaration by such Owner and shall entitle the Association or the Architectural Review Committee to exercise and pursue the rights and remedies provided herein with respect to such breach.

7.5 Approval or Disapproval by Committee. In the event the Architectural Review Committee fails to approve or disapprove such design, location, construction, materials, color and exterior finish within thirty (30) days after the detailed site plan and elevations have been submitted to it, approval shall not be required and such Owner shall be deemed in compliance with this Article. Any plans, elevations and proposals so approved, either expressly in writing or by the expiration of the thirty (30) day period hereinabove provided, shall then permit the Owner to commence construction in accordance with said plans and elevations, but any deviation from said plans and elevations which in the judgment of said Architectural Review Committee is a substantial detriment to the appearance of the structure or of the surrounding area shall be corrected to conform with the plans and elevations as submitted. Any structure to be erected in accordance with approval so given must be commenced and completed within eighteen (18) months of approval, or new approval must be obtained. If the structure is begun and is not completed within eighteen (18) months of the commencement of construction, and in the judgment of the Architectural Review Committee is of offensive or unsightly appearance, then the said Architectural Review Committee or the Directors of the Association, at the option of either, may take such action as may be necessary in its judgment to improve the appearance so as to make the property harmonious with other properties, including completion of the exterior of the structure, installation of screening or covering of the structure or any combination thereof, or similar operations, and the amount of any expenditures made in doing so shall be a lien on the property and may be enforceable by an action at law. The Architectural Review Committee may act by a majority of its members and any authorization or approval made by the Architectural Review Committee must be signed by a majority of the members thereof.

7.6 Restoration of Tract. Upon the completion of the construction on any Tract, the Owner shall to the greatest extent possible restore the Tract to the conditions which existed prior to such construction (taking into account such construction) so that the Tract and improvements shall be in harmony with the surrounding unimproved property. The Owner must complete said restoration within ninety (90) days following completion of construction on any Tract. In the event restoration is not completed within said time period, the Architectural Review Committee or the Association, at the option of either, may complete said restoration at the expense of the Owner, and the amount of any expenditures made in so doing shall be a lien on the property and may be enforceable by an action at law.

ARTICLE VIII MINIMUM BUILDING AND USE RESTRICTIONS

8.1 Building Restrictions. No structure which fails to meet the following minimum standards shall be erected, placed or allowed to remain on any Tract, and the Architectural

Review Committee shall have no power to approve any structure failing to at least meet these minimum standards:

(a) All buildings, residences, outbuildings, garages, sheds, kennels, swimming pools, and other structures of any kind or nature whatsoever shall be constructed and located entirely within the Building Envelope for the particular Tract in question.

(b) No structure shall be erected, altered, placed, or permitted to remain within the Building Envelope on any such Tract other than a single-family dwelling not to exceed two-stories and thirty five (35) feet in height, a private garage, a guest house, and farm and ranch style outbuildings; provided, however, that the foregoing does not supercede any building or zoning ordinance with respect to the size or number of structures permitted on any Tract. For the purposes of these restrictions, "two-stories" shall mean two-stories above grade on at least one overall dimension of the structure, except "split-level" structures will be permitted. All single-story dwellings (except guest houses) shall contain at least 1,400 square feet on the main floor, exclusive of porches, patios, and garages. All two-story or split-level dwellings shall contain at least 1,200 square feet on the ground or main floor and 300 square feet on the second or upper floor, exclusive of porches, patios, and garages.

(c) Any building or residence erected on any Tract shall be of new construction, and no mobile homes, trailers, or old buildings shall be placed or moved onto said Tracts. On the condition that the Owner construct a two (2) car garage, new manufactured homes on permanent concrete foundations shall be allowed onto said Tracts.

(d) No basement or structure on any Tract may be used for dwelling purposes until after its area, as defined by the foundation, has been completely enclosed according to the plans and until it has been substantially completed, with sanitary facilities and utilities permanently installed.

(e) Except as provided herein no tent, shack, or other outbuilding erected on a Tract shall at any time be used as a residence, temporarily or permanently. However, one (1) outbuilding, in the form of a caretaker's or guest quarters, containing at least 800 square feet of living space, may be used as a temporary residence during the planning and construction of a primary residence. Any such use of a guest or caretaker's quarters as a temporary residence shall be limited to and not exceed sixty (60) months.

(f) TV, radio, satellite dishes or other antennae are permitted, but the location, height and size of such antennae must be approved by the Architectural Review Committee, which may include a requirement that such antennae be Screened from View.

(g) All water, sewer, septic, electricity, telephone and cable lines, and other utility lines and facilities constructed incident thereto, shall be placed and installed underground.

(h) Fences, retaining walls and screens shall not exceed seven (7) feet in height. However, the location, design, material, and color thereof must be approved by the Architectural Review Committee. All such fences, retaining walls or screens must be attached or affixed to at

least one (1) point on a residential structure. Approved retaining walls must have an architectural finish.

(i) Trailers or other temporary living convenience shall be kept on said Lots during construction of a residence for a maximum of eighteen (18) months.

(j) No trash, debris, organic or inorganic waste shall be permitted to accumulate on any Tract or in any Road adjacent thereto, but shall be promptly and efficiently disposed of, and no vacant or other Tract shall be used as a dump ground or burial pit. The only allowable outside trash or refuse cans or containers shall be those which are Screened from View by a structure approved by the Architectural Review Committee. Outside incinerators shall not be permitted.

(k) No signs or other advertising devices of any kind or character shall be erected or displayed upon any of the Lots except promotion signs for Hodge Creek Reserve Subdivision, signs of an approved type and size displayed to identify the Owners or Occupants of a dwelling, and directional signs. Any such signs shall first be approved by the Architectural Review Committee. As used herein, the term "sign" shall mean any structure, device or contrivance, electric or non-electric, upon or within which any poster, billboard, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted, or otherwise fastened or affixed.

(l) All secondary structures on any Tract shall match the external design of the primary structure.

(m) No outhouse or privy shall be permitted or maintained on any Tract, except that a chemical toilet shall be permitted on a Tract during the time a residence is being constructed.

8.2 Use Restrictions. The following use restrictions shall be applicable to all Tracts:

(a) Neither hunting, trapping nor the discharge of any rifle, shotgun, pistol or other firearms or use of traps shall be permitted at any time on any Tract or in the Common Facilities.

(b) Except as provided below, no swine, poultry, goats, horses, cows, livestock or other animals shall be raised, kept or cared for on any of the Tracts.

- (1) Ordinary household pets belonging to the Owner shall be permitted on the Tracts.
- (2) The following animals shall be permitted on the Tracts in an amount not to exceed a cumulative total of one (1) animal per every two (2) acres:
Horses, mules, donkeys, llamas, alpacas, cows and sheep.
- (3) Two pigs or two (2) swine shall be permitted per Tract.
- (4) A cumulative total of twelve (12) chickens or other types of poultry shall be permitted per Tract.

In no event shall any Owner raise or care for permitted pets on a commercial basis. No permitted pets or animals shall be allowed off their Owner's premises unless in the immediate company of their Owner or such Owner's agents. The Architectural Review Committee or the Association's directors may at any time limit the number of ordinary household pets on any Tract, and may withdraw permission for any ordinary household pet from any Owner who violates the restrictions of this paragraph.

(c) The layout, design and installation of all landscaping, grasses, lawns or ground covers, except those in specific confined gardens or planters, must be approved by the Architectural Review Committee. No Owner or Owners shall permit noxious weeds or other undesirable plants to grow or spread upon his Tract. In the event any Owner fails to control or eliminate the growth or spreading of such noxious weeds and undesirable plants, the Association shall be entitled to take such action as is necessary to eradicate or control such weeds and plants at the expense of the Owner or Owners of the Tract, and the full amount of any costs and expenses shall be due and payable within thirty (30) days after the Owner is billed therefore.

(d) Except as provided below, no Tract or any building or improvement erected thereon shall at any time be used for the purpose of any trade, profession, manufacturing or business of any description; nor shall any Tract or building be used for hospitals, duplexes, apartment houses, or any other multiple dwelling houses.

- (1) Owners or Occupants may operate professional home based businesses from their Tracts.
- (2) Owners of Occupants may operate small-scale low-impact home based businesses from their Tracts.
- (3) No business operated from any Tract shall employ or engage more than two (2) non-resident employees or independent contractors.

(e) No noxious or offensive activities shall be carried on, nor shall anything be done on any Tract which may become an annoyance or nuisance to the other Owners in the Subdivision. Under no condition shall the Declarant's, or the Declarant's agent's, operation of a gravel pit be deemed a noxious or offensive activity. All mining activities shall be in compliance with State and local laws and regulations.

(f) At no time shall any cars, trucks, motorcycles, bicycles, or other vehicles of any kind or nature be parked or allowed to remain within or adjacent to the Access Easement area, either temporarily or permanently.

8.3 Exterior Maintenance. Each Owner shall provide exterior maintenance upon his Tract and any structure thereon, including painting and repairing the structures, maintaining the grounds to preclude weeds, underbrush, and other unsightly or unnatural growths, and no Owner shall permit refuse piles or other unsightly objects to accumulate or remain on the grounds. In providing such exterior maintenance, the Owner shall utilize color and landscaping schemes that

are harmonious with the surrounding area and consistent with generally accepted concepts for desirable residential developments. In the event any Owner shall fail or neglect to provide such exterior maintenance, the Association shall notify such Owner in writing specifying the failure and demanding that it be remedied within thirty (30) days. If the Owner shall fail or refuse to provide such exterior maintenance within the thirty (30) day period, the Association or its designated agents may then enter such Tract and provide required maintenance at the expense of the Owner. The full amount shall be due and payable within thirty (30) days after the Owner is billed therefore. Such entry on the Tract by the Association or its agents shall not be deemed a trespass.

ARTICLE IX GENERAL PROVISIONS

9.1 Enforcement. Violation of any restrictions, conditions, covenants or agreements herein contained shall give to the Association, acting through its directors, the right to enter upon the Tract, and to summarily abate and remove at the expense of the Owner any building, structure, thing, or condition that may be in, on or upon said Tract contrary to the provisions hereof without being deemed guilty of trespass. The result of every act or omission whereby any restrictions, condition, covenant or agreement is violated in whole, or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law against a nuisance, either public or private, shall be applicable against every such result. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and remedies now or hereafter imposed or available pursuant to this Declaration shall be cumulative and not exclusive. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9.2 Costs of Enforcement. In the event the Association employs an attorney because of a violation by an Owner of one or more of the provisions of this Declaration, or if the Association commences an action for the enforcement of this Declaration or of the lien for assessments and the Association is wholly or partially successful in such action, the offending Owner shall be obligated to pay, on demand, all costs, charges and expenses, including reasonable attorney's fees, incurred by the Association.

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

9.4 Amendment. Any provision herein may be amended or revoked, and additional provisions added, at any time by a written instrument recorded in the office of the Clerk and Recorder of Flathead County, Montana, duly signed and acknowledged by the Owners of record not less than sixty percent (60%) of the Lots subject to this Declaration; provided, however, that so long as the Declarant, Many Lakes East, a Montana partnership, owns any Tract in the Subdivision, then the consent of Many Lakes East shall be required before these covenants and restrictions may be altered or amended; and further provided, however, that the consent of Brist (as defined in paragraph 2.2) whether or not an Owner, shall be required during the first fifteen

(15) year term before these covenants and restrictions may be altered and amended. The consent of Many Lakes East may be considered in the calculation and determination of the said sixty percent (60%) minimum consent requirement.

9.5 Term. The provisions of this Declaration shall be binding for a term of fifteen (15) years from the date of this Declaration, after which time the Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of not less than sixty percent (60%) of the Tracts has been Recorded, agreeing to revoke or terminate this Declaration.

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DOCUMENT IS ILLEGIBLE AND NOT LEGIBLY REPRODUCIBLE

EXHIBIT "A"

DESCRIPTION

Two tracts of land lying and being in Section Thirty-one (31), Township Twenty-eight (28) North, Range Twenty-three (23) West, P.M.M., Flathead County, Montana and more particularly described as follows to wit:

TRACT ONE (1) Beginning at the North 1/4 corner of Section 31, T28N, R23 W., P.M.M., Flathead County, Montana (a found iron pin by 7328-S), thence S89°28'39" E., and along the Northerly boundary line of Section 31, 2629.74 feet to the NE corner of Section 31, said point being in a small lake known as Hodge lake: thence S 00°28'08" E., along the Easterly boundary line of Section 31, a distance of 2410.60 feet to a set iron pin, thence N 90°00'00" W., a distance of 743.29 feet to a set iron pin; thence N 00°28'08" W., a distance of 248.50 feet to a set iron pin and being the p.c. of a 251.82 foot radius curve to the left and having a central angle of 86°53'27"; Thence along said radius an arc length of 381.89 feet to a set iron pin and being the p.t. of said curve; thence N 87°21'25" W., a distance of 186.29 feet to a point in the center of Hodge Creek: thence along said creek center line the following courses and distances; thence S 18°17'35" W., 286.66 feet; S 32°20'40" W., 169.24 feet; thence S 13°42'40" W., 138.80 feet; thence S 28°49'25" W., 339.66 feet, thence S44°23'46" E., 218.82 feet; thence S 09°01'21" W., 187.71 feet; thence S 51°14'58" W., 292.14 feet; thence S 49°01'51" W., 343.13 feet; thence S 35°29'10" W., 121.76 feet; thence S 51°45'01" W., 421.44 feet; thence S 77°36'58" W., 329.40 feet; thence N 38°24'59" W., 248.60 feet; thence N 56°41'02" W., 379.55 feet to a point on the Easterly R/W of a proposed County Road known as Ashley Lake Road; Thence along said proposed Road R/W, the following courses and distances; thence N 30°50'34" E., 229.15 feet to a found iron pin; thence N 08°41'27" E. a distance of 1176.37 feet to a found iron pin; thence N 18°38'36" W., 530.32 feet to a found iron pin; thence N 22°51'13" W., 868.13 feet to a found iron pin; thence N 36°48'40" W., a distance of 564.52 feet to a found iron pin; thence N 31°09'15" W., 524.15 feet to a found iron pin on the northerly boundary line of afore said Section 31; thence S 89°32'52" E., a distance of 1278.64 feet to the place of beginning and containing 216.529 acres of land more or less. Parcel is subject to and together with all easements of record.

TRACT TWO (2) Beginning at the Southeast corner of Section 31, T 28 N., R 23 W., P.M.M., Flathead County, Montana, a found iron pin; thence N 89°26'56" W., and along the Southerly boundary line of section 31, 2635.25 feet to a found iron pin which is the South 1/4 corner of Section 31; thence S 89°58'39" W., and continuing along the South boundary line of Sec. 31, 304.14 feet to a point; thence S89°52'12" W., 30.45 feet to a point in the center of a declared County Road known as Ashley Lake road, thence along said road center line the following courses and distances, N 09°48'43" W., 558.50 feet to the P.C. of a 762.63 foot radius curve concaved right, having a central angle of 13°38'56"; thence along said center line an arc length of 181.67 feet to the P.T.; thence N 03°50'13" E., a distance of 185.21 feet to the P.C. of a 444.73 foot radius curve concaved left and having a central angle of 20°44'22"; thence along an arc length of 160.98 feet to the P.T., thence N 16°54'09" W., a distance of 429.25 feet to the P.C. of a 346.56 foot radius curve concaved right and having a central angle of 19°50'42"; thence along said curve an arc length of 120.03 feet to the P.T.; thence S 87°03'28" E., (radial bearing) and leaving said County road centerline, 30 feet to a found iron pin on the Easterly R/W of said road, thence N 30°50'34" E., and along said R/W, 115.35 feet to a set iron pin in the center of Hodge Creek, thence the following courses and distances along the center of Hodge Creek, S 56°41'02" E., 379.55 feet, thence S 38°24'59" E., 248.60 feet; thence N 77°36'58" E., 329.40 feet, thence N 51°45'01" E., 421.44 feet, thence N 35°29'10" E., 121.76 feet, thence N 49°01'51" E., 343.13 feet; thence N 51°14'58" E., 292.14 feet; thence N 09°01'21" E., 187.71 feet; thence N 44°23'46" W., 218.82 feet; thence N 28°49'25" E., 339.66 feet, thence N 13°42'40" E., 138.80 feet, thence N 32°20'40" E., 169.24 feet, thence N 18°17'35" E., 286.66 feet, thence S 87°21'25" E., and leaving said creek center line, 186.29 feet to set iron pin which is the P.C. of a 251.82 foot radius curve concaved right and having a central angle of 86°53'27"; thence along said curve an arc length of 381.89 feet to a set iron pin which is the P.T. of said curve, thence S 00°28'08" E., a distance of 248.50 feet to a set iron pin, thence N 90°00'00" E., a distance of 743.29 feet to a set iron pin on the Easterly boundary line of Sec. 31; thence S 00°28'08" E., and along said sec. line, 2845.20 feet to the place of beginning and containing 160.282 acres of land more or less. Parcel is subject to all easements of record

STATE OF MONTANA COUNTY OF FLATHEAD) ss
RECORDED IN THE RECORDS OF FLATHEAD COUNTY, STATE OF MONTANA, COPY
AT THE REQUEST OF Mary Lakes Ptnsp ON
4-20-05 2:59 P.M. CLOCK \$ 91.00 PAID
PAUL A. ROBINSON, CLERK AND RECORDER BY
Micki Gresswiler DEPUTY
RETURN
DOCUMENT #

Mary Lakes Ptnsp.
Box 1477
Kalispell MT 59903

2005110 14580

After recording return to:

Vincent G. Rieger
Law Office of Vincent G. Rieger, P.C.
4 Meridian Court
Kalispell, MT 59901



Paula Robinson, Flathead County MT by DD

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FIRST AMENDMENT
TO
DECLARATION
OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RECIPROCAL EASEMENTS FOR
HODGE CREEK RESERVE SUBDIVISION

This Amendment (the "Amendment") to the Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements for Hodge Creek Reserve Subdivision (the "Declaration") is made this 29th day of May, 2008, by MANY LAKES EAST, LLP, a Montana limited liability partnership (sometimes called the "Company" in this Declaration).

RECITALS:

- A. On April 20, 2005, the Declaration was recorded at the office of the Clerk and Recorder of Flathead County, Montana at reception number 200511014580.
- B. In Section 9.4 of the Declaration, the Company and the property owners reserved the right to amend the Declaration.
- C. Pursuant to Section 9.4 of the Declaration, the Company consents to this Amendment.
- D. Pursuant to Section 9.4 of the Declaration, Glen L. Brist and Brist, Inc. consent to this Amendment. Such consent is acknowledged by Glen L. Brist's signature below.
- E. Pursuant to Section 9.4 of the Declaration, no less than sixty percent (60%) of the Owners of record of the Lots subject to the Declaration consent to this Amendment.
- F. Company owns 15 of the 22 Lots which is 68.18% of the Lots.



NOW THEREFORE, pursuant to the powers reserved in Section 9.4 of the Declaration:

1. **County Imposed Restrictions.** As a condition of preliminary and final plat approval for Hodge Creek Reserve North, Flathead County, Montana has imposed the following conditions and restrictions which shall bind the Owners and the Lots within Hodge Creek Reserve North:

- (a) All areas disturbed during development of the subdivision shall be re-vegetated in accordance with a plan approved by the Flathead County Weed Department. See Section 7-22-2116 of the Montana Code Annotated and Section 3.12(J) of the Flathead County Subdivision Regulations.
- (b) Building sites must be located in areas with slopes that do not exceed thirty percent (30%). See Section 3.6(E) of the Flathead County Subdivision Regulations.
- (c) Only Class A and Class B fire resistant roofing materials are allowed. Wood shake shingles, treated or otherwise, are prohibited. See Section 3.21 of the Flathead County Subdivision Regulations.
- (d) Defensible Space Standards shall be incorporated around all primary structures as described in Appendix G of the Flathead County Subdivision Regulations.
- (e) Residence addresses shall be visible from the road, and at the driveway entrance or on the residence.
- (f) All utilities must be underground.
- (g) Lot owners are advised that they are living in a rural area of Flathead County and can expect extended response time for emergency services, if at all available.
- (h) The Association shall be responsible for maintenance of the private roadways within the subdivision. Such roads shall be maintained, including necessary repairs and snow removal, to ensure safe all-weather travel for two-way traffic.
- (i) Owners are responsible for the eradication and control of noxious weeds on their Lots.
- (j) Dogs must be leashed at all times.
- (k) Owners must use bear-proof garbage containers.
- (l) Bird feeding is prohibited.



- (m) Livestock feed shall be contained in buildings when not being used for feeding.
- (n) Compost piles are not permitted unless secured by electrical fencing.
- (o) Pets must be fed indoors or pet food dishes must be brought inside at night.
- (p) Owners are advised that mountain lions are often found in the area.
- (q) A fifty foot (50') no build-buffer shall be adjacent to Hodge Creek. Such buffer is shown on the Final Plat and is labeled the "no-build buffer."

2. **Amended Section 1.5.** Section 1.5 of the Declaration is hereby modified to read:

Section 1.5 **"Common Areas & Facilities"** shall mean those areas and facilities which are to be improved, repaired, and maintained by the Association for the benefit of all Owners, including without limitation all areas within the access easements described below in Article III; together with all areas labeled "common area" on the Final Plat(s) of the Subdivision, all entrance areas, parks, private roadways, improvements, landscaping, and irrigation systems on or serving the Subdivision and for the use and benefit of the Owners, and all fixtures and appurtenances used therewith or attached thereto, and all tangible and intangible personal property at any time owned or controlled by the Association for the common use and benefit of the Owners.

3. **Amended Section 6.2.** Section 6.2 of the Declaration is hereby modified to read:

Section 6.2 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively:

6.2.1 to promote the health, safety, and welfare of the Owners and Occupants of the Subdivision;

6.2.2 for the establishment, improvement and maintenance of the Common Areas & Facilities situated within the Subdivision, including, but not limited to, the payment of insurance on the Common Areas & Facilities, maintenance and repair of private roadways and easements owned or controlled by the Association, and for snow removal from private roadways, easements, and parking areas maintained by the Association;

6.2.3 for the purpose of maintaining, repairing, and replacing the landscaping and irrigation systems within and serving the Common Areas & Facilities, and the cost of labor, equipment, materials, management and supervision with respect to any of the foregoing.



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

IN WITNESS WHEREOF, the undersigned have executed this Amendment.

MANY LAKES EAST, LLP

Paul D. Wachholz, General Partner

Owner of multiple tracts within Hodge Creek South and Hodge Creek North

STATE OF MONTANA)
) :SS
County of Flathead)

This instrument was acknowledged before me on this 29th day of May, 2008 by Paul D. Wachholz as General Partner of Many Lakes East, LLP.



Signature of Notary Public

VINCENT G. RIEGER
Printed Name of Notary Public

Notary Public for the State of Montana

Residing at Kalispell Montana

My commission expires: April 4, 2012

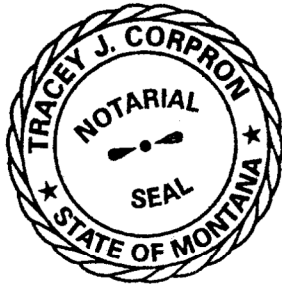


Glen L. Brist

Glen L. Brist, both individually and as
President of Brist, Inc.

STATE OF MONTANA)
 :SS
County of Flathead)

This instrument was acknowledged before me on this 4th day of ~~May~~^{June}, 2008 by Glen L. Brist, individually and as President of Brist, Inc.



Tracey J. Corpron
Signature of Notary Public
Tracey J. Corpron
Printed Name of Notary Public
Notary Public for the State of Montana
Residing at Kalispell, Montana
My commission expires: 6-25-2011

~~SEE EXHIBIT "A" FOR FIRST AMENDMENT
TO BY LAWS~~